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HARVARD I A

CONTESTED ELECTION CASE

OF

CLAUDE S. CARNEY

v.

JOHN M. C. SMITH

FROM THE

**Third Congressional District
of Michigan**





CONTESTED ELECTION CASE

OF

CLAUDE S. CARNEY V. JOHN M. C. SMITH,

FROM THE

THIRD CONGRESSIONAL DISTRICT OF MICHIGAN.

NOTICE OF MOTION.

To JOHN M. C. SMITH.

SIR: Please take notice that I shall contest your election for the office of Member of the House of Representatives of the United States for the Sixty-third Congress by virtue of the election held on the 5th day of November, 1912.

And also take notice that annexed hereto is a petition specifying particularly the grounds upon which I rely in making said contest.

Dated January 4, 1913.

Yours, etc.,

CLAUDE S. CARNEY.

PETITION OF CLAUDE S. CARNEY CONTESTING THE ELECTION OF
JOHN M. C. SMITH AS REPRESENTATIVE IN CONGRESS FROM THE
THIRD CONGRESSIONAL DISTRICT OF MICHIGAN.

To the House of Representatives in the Congress of the United States:

Your petitioner, Claude S. Carney, respectfully represents that the third congressional district of Michigan is composed of the following five counties only: Kalamazoo, Calhoun, Hillsdale, Branch, and Eaton; that your petitioner at the general election held on the 5th day of November, 1912, was the Democratic candidate for Representative in Congress at said election for said third congressional district; that he resides at the city of Kalamazoo, in the said county of Kalamazoo aforesaid; that John M. C. Smith was the Republican candidate for Representative for Congress for said third congressional district at said election, and resides in the city of Charlotte, county of Eaton aforesaid.

Your petitioner further shows the result of said election was determined by the board of State canvassers on the 10th day of December, 1912; that on the face of the returns as determined by said State board of canvassers 14,609 votes were cast for the said John M. C. Smith and 14,482 votes were cast for the said Claude S. Carney; that the said John M. C. Smith claims the seat in the Sixty-third Congress upon the face of said returns by a majority of 127 votes, which result was brought about by false, fraudulent, and illegal returns being made by several of the various inspectors of election in said district, by false counting of ballots, and by corrupt and unlawful conduct of the various boards of election inspectors, officers, and other persons in many of the various precincts of said district, and by some of the boards of county canvassers of said district, by means of which your petitioner was deprived of his lawful, just, and legal rights in the premises; that your petitioner was justly, lawfully, and legally elected to the said office at said election; that he was wrongfully, fraudulently, and unlawfully deprived of his rights in said election to a certificate of his election and to the said seat in Congress from the third congressional district of Michigan, as will be more particularly hereinafter set forth and made to appear

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First. Your petitioner further shows that in the conduct of said election it was the legal duty of the various boards of election inspectors at the various voting precincts in said county in said congressional district to transmit to the board of county canvassers of that county statements of the result of their various respective precincts of the count made of the votes cast therein at said election, and that said statements of the result be by said various boards of inspectors transmitted to said board of county canvassers in envelopes under the seal of said board of inspectors for the purpose of securing the purity of said election, and that by the provisions of the law of Michigan for the purpose of securing the delivery of said sealed envelopes to the said board of canvassers said sealed envelopes shall be placed in the custody of the county clerk; that the law required the said board of county canvassers to meet and organize on the first Tuesday after the first Monday following said election before the hour of 1 o'clock p. m. of said day for the purpose of canvassing the votes cast at said election from said statements; that the law contemplates that said sealed envelopes containing said statements and returns be broken only by the board of county canvassers on the day fixed by law for the said first meeting of said board of canvassers.

Your petitioner further shows that none of said statements of the result of said election in said county of Eaton were delivered under seal of the respective boards of election inspectors to the board of county canvassers on the said day fixed by law for the first meeting of said board of county canvassers; that after said statements were sealed in their respective envelopes and shortly after said election and before the time fixed by law for the first meeting of the board of county canvassers the said election inspectors' seals on said envelopes containing said statements and returns, as well also as said envelopes themselves, were willfully and unlawfully broken, said statements removed from said envelopes and delivered over to various individuals, including John M. C. Smith and one John Davis, of Battle Creek, Mich., one of the Republican congressional committeemen and one of the political campaign managers of said John M. C. Smith in said district; and said John M. C. Smith, said Republican candidate for Congress, and said John Davis and various other individuals were given free, unlimited, and private access thereto; that some of the said parties interested in the election of said John M. C. Smith were permitted, before the meeting of said board of county canvassers, to remove, and did remove, several of said statements, on which the seals had been broken as aforesaid, from the office of said county clerk, who was the lawful custodian thereof; that among some of those who took some of said statements out of the office of said county clerk was one William Smith, a son of said John M. C. Smith; that after said unlawful breaking of said seals of said envelopes which contained said statements and before the meeting of said board of county canvassers abundant opportunity was thus wrongfully, corruptly, willfully, unlawfully, and intentionally given to said John M. C. Smith and to those interested in his election to unlawfully change and alter said statements and returns to the advantage of said John M. C. Smith; that John C. Nichols, the county clerk of Eaton County, unlawfully connived and conspired with the said John M. C. Smith, said William Smith, said John Davis, and others interested in securing the election of said John M. C. Smith by unlawfully permitting said statements to be manipulated as hereinbefore described, and by aiding therein, before the said meeting of the board of county canvassers on the day fixed by law.

And for the reasons aforesaid said statements formed no basis for a lawful canvass of said ballots of said county of Eaton for the office of Representative in Congress; that the breaking of the seals and opening of the envelopes containing said statements before the meeting of the board of county canvassers of said county of Eaton made said statements of no validity in law and no legal force or effect and furnished no basis whatever on which to predicate any claimed election of said John M. C. Smith and made the votes and the ballots for Representative in Congress in said county illegal and void and of no more force or effect than as if said ballots had never been cast.

That said unlawful canvass of said votes in said county of Eaton gave to the said John M. C. Smith a pretended plurality over your petitioner of 912 votes.

Second. Your petitioner further shows that on the face of the returns of the election in the township of Sunfield, in said county of Eaton, the said John M. C. Smith was given 70 votes more than your petitioner was given; that the election in the said township of Sunfield was void and a fraud upon the rights of your petitioner and was unlawfully and illegally and wrongfully conducted to the great prejudice of your petitioner's rights in the following particulars:

1. That the mandatory provisions of the Michigan election law made it the clear duty of one of the inspectors at said election to keep possession of the ballots and to hand them to the voter after another inspector has opened the package of ballots and still another had put his initials upon said ballots; that in plain violation of these said mandatory provisions of the law of Michigan the said ballots were then and there wrongfully and willfully placed in the hands of one Albert Sayer, who was then and there called upon and permitted by said board of inspectors to act as instructor to said voters; that the exact language of the mandatory provisions of the Michigan law in force at said election is as follows:

"No ballot shall be distributed by any person other than one of the inspectors of election nor in any place except within the railing of the voting room to electors about to vote."

That in open violation of said law the said Sayer was then and there placed in a compartment by himself out of the view and hearing of all of the board of inspectors in said precinct at said election; the said Albert Sayer was not then and there an inspector at said election; that there was no legal authority to call in said Sayer to act as an instructor; that there was no provision of law to make him an instructor or to give him the right to handle then and there said ballots for any purpose whatever; nevertheless, the said Sayer was then and there by said board of inspectors illegally and wrongfully given possession of all of the ballots before they were delivered to the voters to be marked; and that the said Sayer, in open violation of the law of Michigan, was then and there given free access to the voters within the railing of the voting precinct and distributed to each voter a ballot, and he, the said Sayer, was given unlimited opportunity to converse with the voters privately, and did so converse with many of said voters in private within the railing of the voting room and out of the hearing of the board of inspectors; that the said inspectors remained together by themselves behind the booths in substantially a different room from the one in which said Sayer distributed to said voters the said ballots.

2. That about the hour of 12 o'clock noon on said election day said board of inspectors adjourned for at least one hour; that two ballot boxes were used on said day in said voting precinct for the purpose of receiving and containing the ballots cast for Representative in Congress at said election; that when said board so adjourned for noon each and all of said inspectors, clerks, and all others who were then assisting said board in said election left said voting place at the same time and left said two ballot boxes and the ballots therein in said voting place unsealed and unlocked without any precaution or measure being taken as required by law at the time of said adjournment to prevent the fraudulent tampering with said ballot boxes; that one Z. Slater, a gatekeeper at said election, was unlawfully and wrongfully for at least one hour given custody of and free access to said ballot boxes and the ballots therein and also of said uncast and unvoted ballots which were in said voting place and of the said poll list kept at said election.

3. Your petitioner further shows that the count of said ballots in said township of Sunfield was not made by the board of inspectors of said election as required by law but on the contrary from time to time said different members of said board left their posts of duty then and there during said count, and permitted third parties who had no legal or lawful right whatever then and there so to do to wrongfully and corruptly act as counters and tally clerks in the place of the lawful members of said election board; that the said Albert Sayer, among others, was permitted then and there to act as one of the counters of said ballots without any lawful authority whatever so to do; that one William R. Witherall was permitted to act on said election board and to so act in place of one of the legal members of said election board; that said Witherall did then and there handle the ballots, statements, and tally books, and kept and made up said tally; that said Witherall took no oath of any kind, and had no legal right whatever to handle said ballots, statements, or tally books.

Your petitioner further shows that one, Joel Bera, who was then the Republican postmaster at the village of Sunfield, without any lawful authority, sat on said election board then and there from time to time, and then and there acted as an inspector and aided in counting said ballots; that the said Bera, the said Republican postmaster, in acting on said board and in making up said count was acting in the interests of the said John M. C. Smith, the said Republican candidate for Representative in Congress. That the said Bera was neither an inspector nor tally clerk nor any other sort of an election officer in said precinct;

that he was personally interested and actively engaged throughout said election in promoting and aiding the said John M. C. Smith, and his conduct in acting on said board was unlawful and an open violation of your petitioner's rights in the premises; that lawful votes then and there cast for your petitioner were not credited to your petitioner in the said tally and count which should have been credited to your petitioner; that votes were credited to the said John M. C. Smith on said tally books which were not cast for him.

4. Your petitioner further shows that the law governing said election required said board to immediately on the closing of said polls at 5 o'clock in the afternoon of said election day to canvass the votes cast in said precinct of Sunfield; that said board unlawfully permitted outsiders to assist in carrying on said canvass of the votes a portion of the time until about the hour of 12 o'clock midnight of said election day; and although the canvas of said vote was not then completed, nevertheless said election board then and there announced publically an adjournment of its proceedings until 7 o'clock of the next morning, to wit, November 6, 1912, and all the members of said board did at, to wit, 12 o'clock midnight of said election day, after announcing said adjournment, blow out the lights and place said polling place in darkness, and went away from said polling place leaving the said two ballot boxes in said polling place unsealed and unlocked, so that designing persons could easily tamper with said two ballot boxes; that immediately after said adjournment several of the members of said election board went about two blocks away into a barber shop, where they received election returns for about three-quarters of an hour; that immediately after said adjournment several of the other members went to bed. That about one hour after said adjournment some of the members of said election board reconvened at said polling place and proceeded with the count of said ballots in the absence of at least one of the members of said election board, and so continued to count said ballots until 5 o'clock in the morning, November 6, 1912, at which last-named time one of said absent members returned to said polling place, whereupon another of the members of said board left said polling place, the count of said votes not then being completed. When said board reconvened about one hour after said adjournment no public announcement was made that said board would reconvene; that none of said board were present continuously through the canvass of said votes.

And your petitioner alleges that the said canvass of said votes in said precinct was not a public canvass thereof, was fraudulent and illegal, and made absolutely void each and every ballot and vote cast in said precinct at said election in said precinct for John M. C. Smith for the office of Representative in Congress; that about 5 o'clock in the morning, November 6, 1912, said election board disbanded without first having made the statement of the result and returns of said election in said precinct, which was required to be done by said election board adjourned or disbanded.

And then and there the members of said election board agreed among themselves to meet at the office of Frank H. Bacon, one of the members of the board of inspectors in said precinct at said election, for the purpose of making out and signing in the office of said Bacon the statement of the result of said election; that as a matter of fact said statements of the result of said election were brought to the office of said Bacon already made out; that said statements were not made out in the presence of said board of inspectors; that said board of inspectors signed said statements without knowing whether said statements were true or false and without knowing whether said statements gave the correct count of the result of the votes cast in said precinct at such election for the office of Representative in Congress or not. That said statement was fraudulently dated back to the 5th day of November, 1912, the day of election.

That the said statement was so falsely dated November 5, 1912, for the purpose of concealing the unlawful conduct of said election board; that in truth and in fact said statement was not made out and signed by said inspectors of election until the forenoon of November 6, 1912; that the acts and doings of said inspectors of election in so dating back to November 5, 1912, the said statement was illegal. Your petitioner further shows that at no time did said election board publicly declare the result of said election, and at no time did said board publicly declare the number of votes received by each person who was a candidate on the ballots at said election for the office of Representative in Congress, which the law of the State then in force required said board of inspectors to do.

Third. Your petitioner further shows that in the township of Carmel, in the county of Eaton, on the face of the returns made by the board of election

inspectors, said board of election inspectors gave to John M. C. Smith 55 votes more than to your petitioner; that said election in said township of Carmel and said returns were illegal and wholly void, and the ballots counted for the said John M. C. Smith in said precinct of Carmel of no more force or effect than as if said ballots had never been cast; that the law of Michigan provides in exact language:

"Said box shall not be opened during the election except as provided by law in case of adjournments."

The only adjournment provided for is a noonday adjournment of one hour, at which time the board of inspectors are given the authority to open the ballot box for the sole purpose of depositing the poll book therein. The law of Michigan also provides that entire secrecy of the ballot shall be maintained, and no ballot exhibited after it is marked shall be counted at all.

Your petitioner further shows that, notwithstanding the plain mandatory provisions of the law, the said board of inspectors in the township of Carmel at said election did then and there, about the hour of 2 o'clock in the afternoon of said day, in violation of the law, willfully and unlawfully open the ballot box containing the ballots there cast at said election for Representative in Congress in said district, and did then and there unlawfully, willfully, and intentionally exhibit said ballots to each member of the board and to the voters who were present who had already cast their ballots, and did then and there exhibit said ballots which had already been cast prior to the hour of 2 o'clock to the electors who had not already voted, who cast their ballots at said election after said ballot box was unlawfully opened as aforesaid; that a large number of the electors who had not yet voted were permitted to and did examine the ballots that had already been cast.

Your petitioner further shows that in violation of the law the said board of inspectors then called two men within the railing who were in no way members of said board of inspectors or officers of said election, and neither of whom had any right or authority to handle said ballots at any time; and that thereupon one member of said board of inspectors, together with said two men called in from the crowd, did then and there proceed at the said hour of 2 o'clock in the afternoon of said day to count the ballots that had already been deposited in the ballot box, and during the same time the remaining members of said board of inspectors then and there carried on and conducted said election; that your petitioner had little or no acquaintance in said township of Carmel; that said township is located, to wit, about 50 miles from your petitioner's residence, and that said township of Carmel is located near the home of the said John M. C. Smith, to wit, about 3 miles from his said home; that said unlawful and willful conduct above described of the board of inspectors in so violating the secrecy of said election and so making public before the close of said polls the number of votes cast for the office of Congressman operated greatly to the prejudice of your petitioner's rights in said election.

Your petitioner further shows that the said unlawful canvass of said ballots made as aforesaid was not made by the board of inspectors but by one member thereof and by said two men who were not members of said board of inspectors assumed by them as the canvass of said board; that said board of inspectors never canvassed the vote cast in said precinct and never counted the ballots so cast; that the returns and statement of the votes made by the said inspectors of election were not made by said inspectors upon their own knowledge; that the said returns and said election were wholly void and of no legal effect.

Fourth. Your petitioner further shows that in violation of the rights of your petitioner and the laws of the State of Michigan on numerous occasions while said election was being conducted on November 5, 1912, in said congressional district in the following-named precincts in said district in said Eaton County, to wit: Townships of Carmel, Bellevue, Bunton, Eaton, Roxand, Windsor, first, second, third, and fourth ward of city of Charlotte. In all of which precincts the election boards respectively returned a majority to the board of canvassers of said Eaton County more votes in favor of John M. C. Smith than for your petitioner, and in each one of said precincts certain of the inspectors therein wrongfully, willfully, and unlawfully entered the booth with several of the voters while said voters were in said booth preparing their ballots; that said inspectors in the aforesaid instances did not before entering said booth or at any other time require said voters to make oath or any of them that they (said voters) could not read the English language, nor did the said inspectors require said voters or any of them to make oath that they (said voters) were physi-

cally unable to mark their ballots, nor were said voters with whom said inspectors entered said booth apparently unable to mark their said ballots. That the acts of said inspectors in so, as aforesaid, entering the booths with said voters were in violation of the law then in force and gave said inspectors the opportunity to scrutinize said ballots and learn for whom said electors were casting their ballots and gave said inspectors the opportunity to influence said voters to vote as said inspectors desired said voters to vote, and said conduct of said inspectors was illegal and was prejudicial to the rights of your petitioner and violated the secrecy of the ballots of said voters; that the acts aforesaid made the election in the aforesaid precincts and all the ballots therein cast for the respective congressional candidates void and illegal and likewise made the several statements of the said several boards of election inspectors in said several precincts of no legal force or effect; that the board of county canvassers of the said county of Eaton had no legal right to canvass the votes in said several precincts for the reasons aforesaid and did, but should not have considered the returns made to said board of county canvassers by the boards of election inspectors of said several precincts; and for the reasons aforesaid the board of State canvassers did but should not have considered the vote in said several precincts for the office of Representative in Congress, and no certificate of election for the reasons aforesaid should have been issued to the said John M. C. Smith.

Fifth. Your petitioner further shows that the said John C. Nichols hereinbefore referred to was an attorney at law and was at said election a candidate on the county ticket of Eaton County in said district for the office of circuit court commissioner; that he was personally present in the voting place in the second ward in the city of Charlotte in said county of Eaton on said election day and was then and there actively engaged in promoting the interests of and endeavoring to secure the election of said John M. C. Smith to the said office of Representative in Congress; that the said Nichols then and there solicited and attempted to persuade in and about said voting precinct voters to vote for said John M. C. Smith for said office of Representative in Congress; that said Nichols in said precinct on said election day claimed to be challenger for the Republican Party and under that pretense secured a position inside the railing where the inspectors of said election were then conducting said election; that said Nichols, in violation of law, for a period of at least two hours on said election day and during much of the time of the heavy voting in said precinct wrongfully acted upon the board of inspectors and wrongfully handled the ballots after they were marked by the voters and before said ballots were deposited in the ballot box, and then and there wrongfully took charge of one of the ballot boxes in which ballots were then being deposited for Representative in Congress and then and there wrongfully deposited in said ballot box a large number of ballots in violation of the laws of Michigan then in force; that said Nichols was not then and there an inspector of said election nor clerk thereof nor any sort of election officer in said precinct at said election and had no right to be within said railing, except for a period of time and for the purpose of casting his own ballot as a voter and not exceeding five minutes. That the presence of said Nichols within said railing in said precinct, except for the time he was actually engaged in marking and casting his own ballot, was fraudulent, wrong, and illegal, and the said acts and doings of the said Nichols in said voting place, as aforesaid, made illegal and void each and every and all the ballots voted in said precinct on said election day and made illegal and void each and every and all ballots cast for any of the congressional candidates on said ballots.

Your petitioner further shows that, to wit, one day before said election the said John C. Nichols entered into a scheme with one Ernest G. Pray, who was then the county clerk of said Eaton County, by which said Pray resigned his said office of county clerk and the said John C. Nichols secured an appointment as county clerk of Eaton County in his own name, which resignation and appointment was not made public until several days after the Wednesday following said election; that said appointment of said Nichols was secured by him, as your petitioner believes and charges the truth to be, for the purpose of promoting the interests of the said Ernest G. Pray as a candidate for the office of representative in the Legislature of Michigan and of John M. C. Smith as a candidate for the office of Representative in Congress, which said appointment gave to the said John C. Nichols the custody of the sealed envelopes containing the election statements and returns of the several boards of election inspectors of the various precincts in said county for the board of county canvassers, giv-

ing said Nichols the opportunity, by the abuse of his said secretly acquired office, of having access to the said sealed envelopes containing said election statements and returns which were in his custody as caretaker only for the said board of county canvassers; that the said John C. Nichols thereafter appeared before the board of county canvassers, when said board of county canvassers actually met, and acted as their representative for the said John M. C. Smith before said board of county canvassers.

Sixth. Your petitioner further shows that in said election in the township of Hamlin, in said county of Eaton, said John M. C. Smith was given 10 votes more than your petitioner was given on the face of the returns made by the board of election inspectors of said township to the board of county canvassers; that the said election in said township of Hamlin and the said returns thereof were void and a fraud upon the rights of your petitioner; that said election and the canvass of the votes therein was by the said board of inspectors unlawfully, illegally, and wrongfully conducted, to the great prejudice of your petitioner's rights in the premises.

Your petitioner further shows that the law governing said election required said board of election inspectors, immediately on the closing of said polls at 5 o'clock in the afternoon of said election day, to canvass the votes cast in said precinct of Hamlin at said election; that the said board of election inspectors, in the canvass of the said vote, wholly ignored the said provisions of the law of Michigan and did then and there, after counting a portion of the ballots cast at said election, and about the hour of 12 o'clock midnight of said election day, adjourn the canvass of the balance of said votes cast at said election until late in the afternoon of Wednesday, the 6th day of November, 1912, without any legal right to so adjourn; that said board of election inspectors and each member thereof then and there, to wit, at the hour of 12 o'clock midnight of said election day, at the time of said adjournment, went away from said polling place, leaving the ballot box unsealed and unlocked, and did then and there leave the ballots cast for the office of Representative in Congress unprotected and exposed, and did then and there take no precautions whatever to protect said ballots from being wrongfully and fraudulently tampered with; that after said adjournment and before said board reconvened one of the members of said board of election inspectors went back to said polling place and proceeded to continue the count and canvass of said ballots in private, and did then and there so handle said ballots and the tally sheets used in said precinct in private for, to wit, one hour, during which time no other member of said board of election inspectors or any other person was present in said polling place.

Seventh. Your petitioner further shows that prior to said election held November 5, 1912, in and throughout said county of Eaton, in said congressional district, an agreement was entered into by and between certain members of the Republican Party and certain members of the Republican committees in and of said county with certain members of the Progressive Party and members of certain committees of said Progressive Party in said county of Eaton, whereby it was agreed between those aforesaid that the Republican Party would not bring any speakers into the said county of Eaton during the political campaign preceding said election to make speeches for and on behalf of the candidate for President of the United States on the Republican ticket. In consideration of which it was further agreed between the aforesaid parties that the Progressive Party would support the entire Republican county ticket in said county, and would also support John M. C. Smith, the Republican candidate for Representative in Congress, to be voted for at said election November 5, 1912; that for the purpose of seeing that the members of the Progressive Party would support the candidates for the various county offices and said John M. C. Smith for Representative in Congress in said election, various of the inspectors and other officers of said election precincts in said county of Eaton and particularly in the second and third precincts in the city of Charlotte, in said county of Eaton, on said election day, did urge upon divers and sundry voters in said precincts and in said two precincts last above mentioned the aforesaid agreement, and by such means and other unlawful means exerted on said election day upon divers and sundry voters in said various election precincts and within the railing within the voting place wrongfully, persuasive, and fraudulent means were used for and on behalf of the said John M. C. Smith, candidate on the Republican ticket in said county of Eaton for Representative in Congress, to the detriment, loss, and injury in said election of your petitioner, and in violation of the laws of the State of Michigan; and for the purpose of seeing that the aforesaid agreement was being performed by the members of the said Progressive Party in

the various precincts hereinbefore in this petition alleged, certain of the said inspectors of election and members of the election boards and other persons did and were permitted to talk within the said railing to voters before casting their ballots in said various election places, and with certain other voters within the booths in said election places before said voters marked the ballots which they subsequently cast at said election; and these acts and doings on the part of said inspectors, members, and officers of said election board and others, who were permitted to talk with said voters within the railing and in the booths of said election place and places in said county of Eaton was in plain violation of law and invalidated all the ballots cast in said precincts at said election, and made all the ballots cast for the said John M. C. Smith for Representative in Congress and which were cast for him at said election in said precincts absolutely null and void.

Eighth. Your petitioner further shows that in the precinct of Union City, in the county of Branch, in said congressional district, the board of election inspectors in said precinct carried on the canvass of the votes cast at said election so held in said precinct of Union City until, to wit, the hour of 4 o'clock in the morning of the 6th of November, 1912, at which time the canvass of the votes cast therein was not completed, and that a large number of ballots had not been canvassed and counted; that without first completing the canvass and counting of said ballots the said board of election inspectors did then and there unlawfully adjourn the canvass of said votes until, to wit, 10 o'clock in the forenoon of said 6th day of November, 1912, and each member of said board of election inspectors and officers of said election and all other persons did then and there abandon and go away from said polling place and did then and there leave the ballot boxes and all of the ballots cast at said election and the tally and poll books used by the board of election inspectors in said election at said polling place without then and there taking any precautions whatever to protect said tally sheets, poll books, and ballots from being tampered with by designing persons; that the statement of the votes cast for the office of Congressman in said precinct was not made out and forwarded to the board of county canvassers within 24 hours after said election as required by law, was not made out in public, and was not filed with the county clerk for the board of county canvassers until Friday, the 8th day of November, 1912; that for the reasons aforesaid the said election held in said township and the said precinct of Union City, the statements of the inspectors of the number of votes cast, and the canvass of the said vote for Representative in Congress was illegal and void, and the board of county canvassers of said county of Branch did, but had no legal authority to, consider said votes in determining the number of legal votes cast in said county of Branch for said office of Representative in Congress.

Your petitioner further shows that the said statements of the votes cast in said precinct of Union City at said election gave to the said John M. C. Smith 67 more votes than were thereby shown for your petitioner.

Ninth. Your petitioner further shows that the original statements and returns of the said election, held November 5, 1912, by the board of election inspectors of the second precinct of the second ward of the city of Battle Creek, in the county of Calhoun, in said third congressional district, showed that 31 votes were cast for the said John M. C. Smith for Representative in Congress and 23 votes for your petitioner for Representative in Congress; that after the board of county canvassers convened and during the time that they were canvassing the votes cast in said county of Calhoun at said election that said board of election inspectors in said second precinct of the second ward of the city of Battle Creek made a second return of the vote cast in said precinct showing that 97 votes were cast for the said John M. C. Smith and 61 votes were cast for your petitioner for the office of Representative in Congress; that said board of inspectors had no lawful authority to make a second return of the votes cast in said precinct at said election; that said board of election inspectors was required by law to canvass the votes of the said precinct in accordance with the first and original return made by the said board of election inspectors of said precinct; that said board of county canvassers did then and there unlawfully ignore the said original statement and return made by the said board of election inspectors and did then and there canvass the vote of said precinct in accordance with the second statement and return of the votes cast in said precinct contrary to law and against the rights of your petitioner in the premises.

Tenth. Your petitioner further shows that in the township of Climax, in the county of Kalamazoo, at said election the total number of votes cast for all the candidates for the office of Representative in Congress was 318; that in the canvass of said vote made by the board of election inspectors in said precinct of Climax the said board of election inspectors canvassed only a portion of the ballots cast for the office of Representative in Congress; that 49 votes cast for the office of Representative in Congress were not counted, canvassed, examined, or considered at all by the said board of election inspectors in their canvass of the ballots cast at said election in said precinct for the office of Representative in Congress; that, to wit, 49 ballots were placed in the ballot box by the said board of election inspectors thereof to the great injury of your petitioner's rights in said canvass without being examined or counted or considered by said board in canvassing said vote; that, to wit, three of said last-named ballots were ballots that should have been counted for the said John M. C. Smith; that, to wit, 35 of said last-named ballots were ballots cast for your petitioner for said office and should have been counted for your petitioner in the canvass of said votes; that said incorrect, incomplete, and wrongful canvass of the ballots cast in said precinct of Climax was a fraud upon the rights of your petitioner and deprived him of a large number of votes which would have given him a majority of, to wit, 31 in said precinct. And your petitioner requests that if it becomes necessary to do so to determine the merits of this contest that the committee on elections may order a recount of the ballots cast in said precinct of Climax for the purpose of determining the true and correct number of ballots cast for your petitioner and for the said John M. C. Smith in said precinct.

Eleventh. Your petitioner further shows that the following is a schedule of the votes by counties as shown by the face of the returns cast respectively for the said John M. C. Smith for the office of Representative in Congress and for your petitioner for the same office at said election in said district on said 5th day of November, 1912:

In Kalamazoo County for John M. C. Smith, 3,288; Claude S. Carney, 3,976.
In Branch County for John M. C. Smith, 2,156; Claude S. Carney, 2,226.
In Calhoun County for John M. C. Smith, 3,966; Claude S. Carney, 3,828.
In Eaton County for John M. C. Smith, 3,302; Claude S. Carney, 2,390.
In Hillsdale County for John M. C. Smith, 1,897; Claude S. Carney, 2,242.

That the following schedule correctly states the votes shown upon the face of different respective statements and returns made by the several boards of election inspectors of the various precincts below stated for the said John M. C. Smith and for your petitioner for said office of Representative in Congress in said third congressional district referred to in this petition, and all of which, together with the entire county of Eaton, are in this petition contested by your petitioner for the various reasons hereinbefore set forth.

	John M. C. Smith.	Claude S. Carney.
Eaton County:		
Precinct Charlotte—		
First ward	71	65
Second ward	161	107
Third ward	214	116
Fourth ward	229	140
Precinct Carmel	137	82
Precinct Benton	158	102
Precinct Eaton	139	43
Precinct Roxand	169	61
Precinct Windsor	174	92
Precinct Bellevue	246	155
Precinct Sunfield	171	104
Precinct Hamblin	87	77
Calhoun County:		
Battle Creek—		
Precinct second, second ward	97	61
Branch County:		
Precinct Union City	207	150
Kalamazoo County:		
Precinct Climax	83	82

First. Your petitioner therefore prays, for the reason hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress at the election held November 5, 1912, in each and every precinct (except

the precinct of Climax, Kalamazoo County, Mich.), specifically named in the foregoing petition, and the entire county of Eaton be held to be illegal and void, be thrown out and disregarded, and be not counted or allowed at all.

Second. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the entire county of Eaton be held to be void and of no force or effect whatsoever.

Third. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the first ward in the city of Charlotte, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Fourth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the second ward in the city of Charlotte, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Fifth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the third ward in the city of Charlotte, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Sixth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the fourth ward in the city of Charlotte, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Seventh. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Carmel Township, in Eaton County, be held to be void and of no force or effect whatsoever.

Eighth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Benton Township, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Ninth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Eaton, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Tenth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Roxand Township, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Eleventh. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Windsor Township, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Twelfth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Bellevue Township, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Thirteenth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Sunfield, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Fourteenth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Hamblin, in said county of Eaton, be held to be void and of no force or effect whatsoever.

Fifteenth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the second precinct, second ward, in the city of Battle Creek, Mich., in the county of Calhoun, be held to be void and of no force or effect whatsoever.

Sixteenth. Your petitioner prays, for the reasons hereinbefore stated, that all the votes cast for the various candidates for Representative in Congress in the precinct of Union City, in the county of Branch, be held to be void and of no force or effect whatsoever.

Seventeenth. Your petitioner further prays that there be added to the total number of votes returned by the board of inspectors of the township of Climax, Kalamazoo County, Mich., on behalf of the said John M. C. Smith for candidate in Congress 3 votes, and that there be added to the total number of votes re-

turned by said board of inspectors credited to your petitioner in said township of Climax 35 more votes than the return of said board of inspectors credited to your said petitioner in their said return.

Eighteenth. Your petitioner further prays that an order be issued by the House of Representatives requiring the custodian of the ballot boxes and the box and boxes of the ballots cast in the precinct of Climax at said election held November 5, 1912, be produced, and said ballots for the respective candidates for Representative in Congress voted for at said election may be recounted and correctly determined as shown by said ballots, or that an order be issued by the House of Representatives requiring said ballot boxes containing said ballots to be produced before the Committee on Elections of the House of Representatives at such time and place as said order shall determine when made.

Nineteenth. Your petitioner further prays that the certificate of election issued to and on behalf of the said John M. C. Smith entitling him to a seat in the House of Representatives of the Sixty-third Congress by virtue of the election held November 5, 1912, in the third congressional district in the State of Michigan be held to be null and void, and that the said John M. C. Smith be deprived of a seat in the House of Representatives of the Sixty-third Congress of the United States of America.

Twentieth. Your petitioner further prays that for the reasons stated in the foregoing petition that he be held to have been elected at the election held November 5, 1912, in the third congressional district of the State of Michigan, as the Representative in and to the Sixty-third Congress of the United States of America from the third congressional district of the State of Michigan.

Twenty-first. Your petitioner further prays and asks that such further finding and determination be made in the premises as may be in accordance with law, equity, and justice.

CLAUDE S. CARNEY,
Petitioner and Contestant.

Business address: Room 711 Kalamazoo National Bank Building, Kalamazoo, Mich.

E. C. SHIELDS,
Attorney for Petitioner and Contestant.

Business address: Howell, Mich.

JOHN W. ADAMS,
Attorney for Petitioner and Contestant.

Business address: 108 West South Street, Kalamazoo, Mich.

STATE OF MICHIGAN,

County of Kalamazoo, western district of Michigan:

Claude S. Carney, being sworn, says that he is the petitioner and contestant named in and who signed the foregoing petition; that the facts alleged in the foregoing petition by him subscribed are stated on his information and belief and upon personal investigation that he has made of the facts in said petition, and upon certain affidavits made and sworn to as to certain of those facts, which affidavits are now in his possession; that petitioner verily believes that the facts stated in the foregoing petition are true in substance and in fact as in the foregoing petition the same are set forth; that petitioner files this petition and makes this contest in good faith and believes that his contest is meritorious, and that he is entitled to be seated as a Member of the House of Representatives in the Sixty-third Congress from the third congressional district of the State of Michigan in the place and stead of John M. C. Smith.

CLAUDE S. CARNEY.

Subscribed and sworn to before me his 4th day of January, A. D. 1913.

[SEAL.]

JOSEPH W. STOCKWELL,
*United States Commissioner in and for
the Western District of Michigan.*

To JOHN M. C. SMITH.

SIR: Please take notice that annexed hereto is a proposed amendment to my notice of contest heretofore served upon you, together with petition to the House of Representatives of the United States and to the Committee on Elections praying that the annexed amendment may be authorized and permitted.

Dated April 22, 1913.

Yours, etc.,

CLAUDE S. CARNEY.

PETITION FOR AN AMENDMENT TO CONTESTANT'S NOTICE OF CONTEST.

To the House of Representatives in the Congress of the United States, and to the Committee on Elections thereof:

1. Your petitioner, Claude S. Carney, being first duly sworn, represents that heretofore on to wit, the 8th day of January, 1913, he caused to be served upon John M. C. Smith his written notice contesting the election of the said John M. C. Smith to the office of Representative in Congress for the third congressional district of Michigan for various reasons in said notice set forth.

2. Your petitioner further shows that at the time of filing said notice he had no knowledge or information concerning the matters set forth in the annexed proposed amendment to said notice of contest.

3. Your petitioner shows that he made diligent search and inquiry in Eaton County before the filing of said notice of contest for the purpose of learning the details of the illegal conduct of the various members of the boards of inspectors of the said November 5 election in the different precincts and townships of said county of Eaton, and that, as your petitioner is informed, the utmost secrecy was maintained by said board of election inspectors of said township of Winsor concerning the matters set forth in said amendment, and that your petitioner did not learn and had no means of learning of the matters set forth in said annexed proposed amendment to his said notice of contest, prior to the time of filing his said notice of contest.

4. Your petitioner further shows that he is informed and believes that said ballots were after the said November 5 election preserved in the ballot box used at said election; that said ballot box was opened at the time of the township election held on Monday, the 7th day of April, 1913, and said ballots destroyed, and that shortly thereafter the matters set forth in the annexed amendment were discussed by some of the citizens of said township of Winsor; that your petitioner lives to wit about 65 miles from the place of holding elections in said township of Winsor and for the first time on the 14th day of April, 1913, received information concerning the matters set forth in said amendment; that on the 18th day of April, and as soon after being informed concerning said matters as your petitioner could conveniently do so, he made a trip from Kalamazoo to said township of Winsor, Eaton County, for the purpose of investigating said information; that your petitioner believes that each and every matter set forth in said amendment is true and material in his said contest; that your petitioner has made this application for his said amendment as early as he reasonably could do after learning of the facts therein set forth.

Your petitioner therefore prays that an order or resolution may be made and entered in this matter authorizing and permitting your petitioner to amend his original notice by adding thereto the matters set forth in the annexed amendment with like effect as if said matters were contained in his original notice of contest.

CLAUDE S. CARNEY.

Subscribed and sworn to before me this 22d day of April, 1913.

ORRA STIEGHTZ,

Notary Public in and for Kalamazoo County, Mich.

My commission expires December 12, 1916.

AMENDMENT TO CONTESTANT'S NOTICE OF CONTEST.

To the House of Representatives in the Congress of the United States:

And now comes your petitioner, Claude S. Carney, and amends his original notice of contest in the above-entitled matter by adding to said original notice of contest a new paragraph, to be known as paragraph 12, which said new paragraph is as follows:

"Twelve. Your petitioner further shows upon information and belief and so charges the truth that at said election so held on said 5th day of November, 1912, in the said township of Winsor, in said county of Eaton, a large number of void and illegal ballots were by said board of election inspectors of said township of Winsor, in said county of Eaton, counted for various candidates for the office of Representative in Congress, which said void and illegal ballots so counted by said board of inspectors of said election of said township of Winsor did not bear the initials of any member of the board of inspectors of said election, and did not bear any initials at all."

Your petitioner further shows that he is informed, and believes and so charges the truth, that all of the ballots counted by the said board of inspectors of said election in said township of Winsor for the various candidates for the office of Representative in Congress were void and illegal ballots, for the reason that no one of said ballots, when so counted then and there, had written upon the back the initials of any member of said board of inspectors of said election, and that not one of said ballots so counted had any initials at all of any kind written upon the back thereof.

That the said board of election inspectors of said township of Winsor did then and there canvass and count 174 ballots for John M. C. Smith for the office of Representative in Congress, all of which were illegal and void ballots, and that not one of said 174 ballots, so canvassed and counted for said John M. C. Smith, were indorsed with the initials of any inspector of said election, and all of said ballots were without any initials at all indorsed upon the back thereof, and that said board of election inspectors did then and there canvass and count for your petitioner, Claude S. Carney, 92 ballots, and that none of said ballots were indorsed with the initials of any inspector of said election.

Your petitioner further shows that he is informed and believes that if any inspector ever wrote his initials upon any of the ballots used at said election said initials were written above the perforation on every ballot and upon the perforated corner containing the number of the ballot, and in each and every instance said initials were torn off each and every ballot before said ballot was deposited in the ballot box by the inspector in charge of said ballot box, so that at the time of the canvass of said vote by the said board of election inspectors after the closing of the polls none of the said ballots had written or indorsed thereon any initials of any inspector as required by law, and that inasmuch as the statutes of Michigan provide in express language that "in the canvass of the votes any ballot which is not indorsed with the initials of the inspectors shall be void and shall not be counted," all of the ballots canvassed from the township of Winsor at said election for the various candidates for Representative in Congress should accordingly be declared void and illegal, and should be deducted from the total vote canvassed by the board of county canvassers of Eaton County for the said various candidates for said office of Representative in Congress.

Your petitioner, therefore, in addition to all other matters prayed for in his original notice of contest, prays that all of the votes cast for the various candidates for the said office of Representative in Congress for the reasons aforesaid be held illegal and void and of no force or effect whatever.

CLAUDE S. CARNEY.

STATE OF MICHIGAN, *County of Kalamazoo, ss:*

On this 22d day of April, 1913, before me, a notary public, personally appeared Claude S. Carney, the above-named petitioner, and made oath that he had read the foregoing amendment by him subscribed; that the same was true, of his own knowledge, except as to those matters therein stated upon his information and belief, and as to those matters he believes them to be true.

ORRA STIEGLITZ,
Notary Public in and for Kalamazoo County, Mich.

My commission expires December 12, 1916.

E. C. SHIELDS,
JOHN W. ADAMS,
Attorneys for Contestant.

STATE OF MICHIGAN, *County of Eaton, ss:*

R. R. McPeck, of the city of Charlotte, county of Eaton, and State of Michigan, being duly sworn, deposes and says that on the 3d day of February, A. D. 1913, he served a true copy of the answer to notice of contest, of which the attached is a copy, personally on Claude S. Carney, contestant named in said proceedings, by then and there delivering the same to said Claude S. Carney at the office of said Claude S. Carney in the city of Kalamazoo, in said State of Michigan.

R. R. McPECK.

Subscribed and sworn to before me this 4th day of February, A. D. 1913.

[SEAL.]

VAUGHAN G. GRIFFITH, *Notary Public.*

My commission expires December 10, 1914.

ANSWER TO NOTICE OF CONTEST.

SIR: Please take notice that the following is a copy of the answer of the contestee filed with the Clerk of the House of Representatives of the United States in the above-entitled contest.

Yours, etc.,

J. M. C. SMITH, *Contestee*.

Dated February 1, 1913.

To CLAUDE S. CARNEY, *Contestant*.

ANSWER OF JOHN M. C. SMITH, CONTESTEE AND RESPONDENT, TO NOTICE OF INTENTION TO CONTEST BY CLAUDE S. CARNEY, CONTESTANT.

Now comes John M. C. Smith, respondent, and now and at all times hereafter saving and reserving unto himself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in said notice contained, for answer to the said notice of the intention of the said Claude S. Carney to contest the election of respondent, John M. C. Smith, as a Member of the House of Representatives of the Congress of the United States at the election held in said third congressional district of the State of Michigan for said office on the 5th day of November, A. D. 1912, which said notice was served upon the respondent on the 8th day of January, 1913, following, says:

And among other objections to the said notice of contest the respondent expressly reserves to himself and does not waive the right to raise the point at the hearing that the said notice proceeds upon the theory of stating many provisions of the election law of the State of Michigan, and of pointing out in many precincts certain irregularities and alleged misconduct in the detail work of several boards of election inspectors at various voting precincts in said congressional district, and wholly fails to allege that the result of the election was in any way altered or affected by any of the irregularities set forth in said notice, and does not allege that the contestant received a larger number of legal votes at said election than were given and counted for the respondent.

This respondent admits that the third congressional district of Michigan is composed of the five counties mentioned in the first paragraph of contestant's petition, and admits that contestant was the Democratic candidate for Representative for Congress for said third congressional district, and that he resides in the city of Kalamazoo, in the county of Kalamazoo; and admits that the respondent was the Republican candidate for Representative for Congress for said third congressional district at said election, and that he resides in the city of Charlotte, in said county of Eaton; and alleges that one Edward N. Dingley was the candidate of the Progressive Party for Representative for Congress for said third congressional district at said election, and that he resides in said city of Kalamazoo; and alleges that one Levant L. Rogers was the candidate for the Socialist Party for the same office at the said election.

Respondent admits that the result of said election was determined by the board of State canvassers on the 10th day of December, 1912. That on the face of the returns as determined by said board of canvassers 14,609 votes were cast for respondent and 14,482 votes were cast for said contestant; that the said John M. C. Smith claims a seat in the Sixty-third Congress by a majority of 127 votes, but denies that the result was brought about by false, fraudulent, and illegal returns being made by several of the various inspectors of election in said district, or by a false counting of ballots, or by corrupt and unlawful conduct of the various boards of election inspectors, officers, or other persons in any of the various precincts of said district, or by any of the members of the county canvassers of said district by means of which the contestant was deprived of his lawful, just, or legal rights in the premises, and denies that the contestant was justly, lawfully, and legally elected to said office at said election; that he was wrongfully, fraudulently, and unlawfully deprived of his right in said election to a certificate thereof or to a seat in Congress from the third congressional district of Michigan, as alleged in said notice; and respondent alleges that he was legally and lawfully elected to said office and was entitled to the certificate of election which was issued to him by the board of State canvassers.

This respondent further answering, alleges that the said election was legal, fair, honest, and just, and that the said contestant, Claude S. Carney, received credit for every vote cast for him in the count of ballots, and that there was

no fraudulent or illegal voting, and that no votes were cast in said district for respondent except by legal and duly qualified electors residing in the precinct where the vote was cast; that no vote was counted for respondent that was not a legal vote; that no fraud, intimidation, or illegal persuasion was used to affect or change the desire, intention, or purpose of any voter in casting his ballot for his choice of candidates for such office; that said Edward N. Dingley, the candidate for the Progressive Party for said office at said election, was determined by said board of State canvassers to have received of the votes at said election 12,917; that Levant L. Rogers and Levant C. Rogers were the candidates of the Socialist Party for the same office at the same election and were determined by said board of State canvassers on said 10th day of December to have received, respectively, 1,737 and 1,009 votes cast for said office, and that the returns made by the various canvassing boards mentioned in said notice of contest are correct.

The respondent further says that said contestant has not set up in said notice of contest a claim that any illegal or spurious votes were cast at said election for the respondent, nor the number of votes claimed to be illegal or by whom any such vote was cast; that such answer is indefinite, vague, and uncertain and consists merely of charges of slight irregularities by various election inspectors and canvassers without any claim that such irregularities in any way affected the result of the election, and without any allegations that if the irregularities alleged had not occurred that the result would have been different from that finally announced and proclaimed in the several precincts mentioned, and that such general allegations of irregularities are not sufficient to impeach said vote or disfranchise the voters in any precinct complained of in said district; and further answering the allegations set forth in the notice of contest in this case, respondent says:

First. Respondent admits that in the conducting of said election it was the legal duty of the various boards of election inspectors at the various voting precincts in each county in said congressional district to transmit to the board of county canvassers of that county statements of the results of their various respective precincts of the count made of the votes cast therein at said election, but respondent alleges that the statement of the law regulating the practice in those cases as set forth in said notice of contest is misleading, and alleges that by section 38 of Act No. 214 of the Public Acts of Michigan for 1901 it is provided that after the count of the tickets or ballots have been completed by the board of election inspectors the result shall be publicly declared, and the statute proceeds in the following manner:

"The inspectors shall then prepare a statement of the result in duplicate showing the whole number of votes cast for each office, the names of the persons for whom such votes were given, and the number each person received, in which statements the whole number of votes given for each office and the number given for each person shall be written out in words at length. Such duplicate statements, when certified by the inspectors and duly signed, shall be delivered to the township or city clerk, and shall by said clerk be, within 24 hours after the result is declared, delivered in person or immediately forwarded by registered mail, one copy to the board of county canvassers, in care of the judge or register of probate, and the other, together with one of the original tally sheets, to the county clerk, which said statements and tally sheets shall be placed in separate envelopes and sealed by said inspectors before their delivery to the township or city clerk."

And denies that there are statutory provisions requiring or contemplating that the sealed envelopes containing the statements and returns which are to be delivered to the county clerk shall be by him delivered to the board of county canvassers and the seals of his mail be broken only by the board of county canvassers, as alleged in said notice of contest, but respondent alleges that it is contemplated that the duplicate copy which is mailed to the county clerk shall be by him opened and the statements and returns filed in his office and become then and there a public record, subject to examination by any interested person; and that the duplicate copy which is mailed or delivered to the board of county canvassers either in person or by mail in care of the judge or register of probate, is the mail of the board of county canvassers and may be by said board opened when the same shall be delivered to said board of county canvassers.

Respondent further alleges that by the provisions of section 4 of act No. 43 of the public acts of Michigan for 1905 the board of county canvassers shall

proceed without delay to canvass the return of votes cast for all candidates for office voted for and all other questions voted on at said election according to the returns filed in the office of the county clerk by the several boards of election inspectors at the various voting precincts in the county. And the board has its own duplicate of the returns which is delivered to it in person by the judge or register of probate, with which it can verify the returns on file in the office of the county clerk. Respondent also raises the point that the notice of contest makes no pretense that the election returns received by the county clerk were in anywise altered, changed, or tampered with.

Respondent further alleges that the judge of probate for said county of Eaton delivered to said board of county canvassers the duplicate copy forwarded to said board of county canvassers in charge of the judge or register of probate of said county from each election precinct of said county, and alleges that said board of county canvassers itself broke the seals of said duplicate returns and considered the same in connection with the returns on file in the said office of the county clerk of said county. Respondent denies the allegation in said notice of contest that none of said statements of the result of said election in said county of Eaton were delivered under the seal of the respective boards of the election inspectors to the said board of county canvassers on the said date fixed by law for the first meeting of said board of county canvassers, but says that all of its statements of the result of said election in said county of Eaton, being a statement from each of the voting precincts in said county, were delivered under the seal of the respective boards of election inspectors by the judge of the probate court in said county of Eaton to the board of county canvassers on the said day fixed by law for the first meeting of said board of said county canvassers; and denies that after said statements were sealed in their respective envelopes, or shortly after said election, or before the time fixed by law for the first meeting of the board of county canvassers the said election inspectors' seals on said envelopes addressed to said board of county canvassers containing the statements and returns, as well as said envelopes themselves, were willfully and unlawfully broken, said statements removed from said envelopes and delivered over to the various individuals, including the respondent and one John Davis, of Battle Creek, Mich., one of the Republican congressional committeemen "and one of the political campaign managers of said John M. C. Smith in said district," and denies that John Davis, of Battle Creek, Mich., was one of the Republican congressional committeemen of said district, and says that the envelopes which were sealed and forwarded by mail to said county clerk, containing a duplicate statement of the results of said election, were opened by said county clerk and the statements taken therefrom and filed in his office, as is contemplated by law, and became public records of his office and were subject to examination by the public in general; but, further answering, denies that the respondent or said John Davis or any other person was given free, unlimited, and private access thereto; and denies that any party interested in the election of said John M. C. Smith was permitted before the meeting of the board of county canvassers to remove or did remove any of said statements from the office of said county clerk, who was the lawful custodian thereof, and denies that one William Smith, a son of the respondent, ever saw, handled, or removed from the office of said county clerk any of those statements, and denies that any opportunity was thus wrongfully, corruptly, willfully, unlawfully, or intentionally given to the respondent or to those interested in his election to unlawfully change and alter said statements and returns, and denies that John C. Nichols, the county clerk of Eaton County, unlawfully connived and conspired with the said John M. C. Smith and William Smith, said John Davis or other persons interested in securing the election of the respondent, by unlawfully permitting said statements to be manipulated before said meeting of the board of county canvassers, but says that the respective returns and statements from the several boards of election inspectors from the various precincts in said county were addressed, mailed, sealed, and delivered to the county clerk for said county of Eaton, and that said John C. Nichols was then and there the county clerk of said county of Eaton, and that he received said returns and statements inclosed in secure envelopes and sealed, mailed, and delivered to him by the said several boards of election inspectors, as is required by law, and opened the same to ascertain what was contained in the envelopes, as he had the lawful right to do, they being addressed to him officially, and recorded and filed said returns and statements of election,

whereby they became public records in his office; and that said statements and returns were written in ink and now show that they have not been altered, changed, or tampered with since they were made out by the respective boards of election inspectors, and that said returns are of such a nature, character, and form that they could not be altered, changed, or tampered with without being discernible to the naked eye. And said returns never have been altered, changed, or tampered with and were by the board of county canvassers compared with the duplicate returns and statements delivered to them under seal and found to be duplicates of the set which had been delivered to said board of county canvassers by said judge.

Respondent alleges that said notice of contest is not fair in the statement of the law regulating the practice relative to these returns and that it is intentionally misleading in secreting and suppressing the fact that a duplicate set of the required returns and statements of results had been sealed, mailed, and delivered to said board of county canvassers in care of the judge or register of probate; and there is no allegation in the notice of contest that any alteration had ever been made to effect the integrity of the statements and returns on file with the county clerk.

Respondent further denies that the statements on file in the Eaton County clerk's office, and delivered personally to said board of county canvassers by the judge of probate for said county, form no basis for the lawful canvass of said ballots of said county for the office of Representative in Congress; that the breaking of the seals and opening of the envelopes containing said statements before the meeting of the county canvassers of said county made said statements of no validity in law and of no legal force and effect, and furnish no basis whatever on which to predicate any claimed election of respondent, and made the votes and ballots for Representative in Congress in said county illegal and void and of no more force and effect than if said ballots had never been cast, as alleged in said notice of contest; but admits that the canvass of said votes in said county of Eaton gave to respondent a plurality over the contestant of 912 votes.

Respondent further alleges that it is the general practice in counties within said third congressional district, also throughout this State, that when the statements and returns of the results of election are forwarded to the county clerk personally, as required by law, the county clerk immediately opens the envelopes containing such statements, and they are placed on file as required by law and are open to the inspection of any interested person; while the envelopes containing the duplicates of such statements and returns which are sealed and forwarded to the board of county canvassers in care of the judge and register of probate, are preserved intact and delivered by the judge or register of probate to the board of county canvassers personally when it convenes on the day appointed by law for their convening; and respondent further alleges that this was the practice pursued at this election in the counties of Branch, Calhoun, and Hillsdale in said congressional district, and alleges that the county of Kalamazoo in said district was the only county in which the clerk did not open his mail and remove the statements from the several envelopes and place the same on file, subject to public inspection, before the convening of the board of county canvassers.

Second. Respondent admits that on the face of the returns of the election in the township of Sunfield, in said county of Eaton, he was given 70 votes more than the contestant, but denies that the election in said township of Sunfield was void and a fraud upon the rights of the contestant, and denies that it was unlawfully, illegally, and wrongfully conducted to the great prejudice of the contestant's right in the premises.

1. Respondent denies that the mandatory provisions of the Michigan election law make it the clear duty of one of the inspectors of said election to keep possession of the ballots and to hand them to the voters after another inspector has opened the package of ballots, and still another had put his initials upon said ballot; and denies that in plain violation of such alleged mandatory provision of the law of Michigan said ballots were then and there wrongfully and willfully placed in the hands of one Albert Sayer, who was then and there called upon and permitted by said board of inspectors to act as instructor to said voters; and denies that the ballots were illegally distributed to the voters or that any of the officers of said board of election inspectors was then and there placed in a compartment by himself out of the view and hearing of all of the board of inspectors in said precinct at said election; and denies that

said Albert Sayer mentioned in said notice of contest was not then and there an inspector of said election; and denies that there was no legal authority to call in said Sayer to act as instructor or an officer of said board of said election inspectors; and denies that there was no legal right to make said Albert Sayer one of the officers of said board of election inspectors, and to give him the right to handle then and there said ballots and deliver them to the voters as needed; and denies that any ballots were delivered to the voters at such precinct when the voters were without the railing of the voting precincts as provided by law; and denies that said Sayer was given any opportunity to converse with the voters privately; and denies that he did so converse with the voters in private within the railing of the voting room out of the hearing of the board of inspectors; and denies that said Sayer used any improper means whatever in the interest of this respondent, and says that the election was conducted in the precinct in question in one room and all of the officers connected with such election and the voting booths were within one room.

2. Respondent admits that about the hour of 12 o'clock noon on said election day said board of inspectors adjourned for at least one hour, and says that it was within their legal right so to do. Respondent admits that two ballot boxes were used on said day in said voting precinct for the purpose of receiving and containing the ballots cast for Representative in Congress at said election; but denies that when said election board was adjourned for noon each and all of said inspectors, clerks, and all others who were then assisting said board in said election, left said voting place at the same time and left the said two ballot boxes and the ballots therein in said voting place unsealed and unlocked without any precaution or measure being taken, as is required by law at the time of said adjournment, to prevent fraudulent tampering with said ballot boxes; and denies that one Z. Slater, a gatekeeper at said election, was unlawfully, for at least one hour, given custody of and free access to the ballot boxes and the ballots therein, and also of the uncast and unvoted ballots which were in said voting place, and of the poll list kept at said election.

3. Respondent denies that the count of said ballots in the township of Sunfield was not made by the board of inspectors of said election as required by law, but alleges that every legal ballot cast at this precinct for the office of Congressman was correctly counted and tallied; and alleges that respondent received 70 legal votes more than the contestant received at this precinct; and respondent further says that the inspectors of the election at the precinct in Sunfield were Democrats and were opposed to the election of respondent, and were in favor of and voted for the contestant and the conduct of the election in this precinct was in the hands of Democrats who were adverse to the election of respondent, and that if any irregularities were designedly practiced by the board in this precinct, it was for the purpose of invalidating the votes which the electors cast for the respondent. Respondent alleges that when the votes were counted at this precinct by a board which was adverse to himself, and the members of which board were arguing in favor of the election of contestant, the board should not by its act be allowed to disfranchise the electors who had voted for respondent by omitting some of the directory provisions of the election law and enable the contestant to procure the throwing out of this vote; respondent denies that the election board during said count left their posts and permitted third parties who had no legal or lawful right whatever so to do, to wrongfully and corruptly act as counters and tally clerks in the place of the lawful members of said election board, and denies that said Albert Sayer among others was then and there permitted to act as one of the counters of said ballots without any authority so to do or that one William R. Witherall was permitted to act on said election board, or was permitted to act or did so act in place of one of the legal members of said board, or that he was unlawfully allowed to and did then and there handle the ballots, statements, and tally books and kept and made any illegal tally, but alleges that if any other person did assist in the keeping or in making said count, the same was not done in the interest of respondent, but was done by those who were opposed to respondent as political partisans.

Respondent denies that one Joel Bera was acting as an inspector of election at this precinct, and denies that he had been campaigning for respondent during the day of election, and denies that said Joel Bera was actively engaged throughout said election in promoting and aiding respondent; and denies that he acted as an inspector of said election; and denies that any lawful vote then and there cast for the contestant was not credited to the contestant in the

tally and count, which should have been credited to him; and denies that any votes were credited to respondent which were not cast for him.

Respondent alleges that said Joel Bera was entirely neutral on the day of the election; that the township clerk of said township is a son-in-law of said Joel Bera; that said township clerk had appointed Joel Bera as his deputy clerk, and that said Joel Bera for a long time previous to said election was the deputy township clerk for said township of Sunfield; that said township clerk was temporarily called from his post on said election board during the counting of the ballots and he called his deputy, said Joel Bera, to take his place for a time, and that the work performed by said Joel Bera on said board in place of the township clerk was simply clerical work in tallying the vote as given to him by one of the inspectors of election; that two clerks were employed keeping duplicate tally sheets; and that they were checked and kept under the eye of the inspectors of election and the general public, which by the Michigan law had the right to be present and watch the counting; and that the count was legal and correctly kept by the clerks of said election, and that Joel Bera only acted in the place of the township clerk for a limited period of time on the morning of November 6, while the township clerk was absent from the board; and respondent denies that said Joel Bera on said election day was personally interested or actively engaged throughout said election in promoting and aiding the respondent in his election.

4. Respondent admits that the election laws of Michigan provide that immediately upon closing the ballots the board shall proceed to canvass the votes, but alleges that said law is directory only as to the steps of counting the ballots, and that the legally qualified voters can not be disfranchised because of any departure from such directory regulation in not counting said votes within the time or as directed by said statute where no injury is shown to result therefrom, and this respondent denies that said board of inspectors in the township of Sunfield unlawfully permitted outsiders to assist in carrying on the count of the vote or that the said board of inspectors did publicly announce the adjournment of its proceedings at about the hour of 12 o'clock midnight until 7 o'clock the next morning, or that all of the members of said board at 12 o'clock midnight of said election day blew out the lights or placed said polling place in darkness, or that it went away from said polling place leaving the ballot boxes unsealed or unlocked, or that designing persons could easily tamper with said ballot boxes, or that several members of said election board adjourned to the barber shop or remained away for three-quarters of an hour, or that upon adjournment at the time several of the members went to bed, but alleges the truth to be that the chairman of said election board, the supervisor in said township of Sunfield, one John Palmer, one of the Democratic members of said board, refused to continue to count said ballot, claiming that he was exhausted, and sat in the corner of the room and slept while the other members continued the canvassing and counting of said vote and finally insisted on going home at about the hour of 12 o'clock midnight; that thereupon one of the inspectors telephoned to the prosecuting attorney of said county of Eaton in the city of Charlotte for the purpose of obtaining advice from said office as to whether an adjournment of the count might be taken and had, and obtained the advice that the board should continue the count; that said John Palmer was then notified by the balance of the board of the advice given by the prosecuting attorney and notified that the board would continue the counting of the ballots and was requested to return to the voting place where such count was being made by the balance of the board of inspectors, but that said John Palmer, Democratic chairman and supervisor, as aforesaid, absolutely refused to remain or return, claiming that he was tired out and could work no longer; that thereupon the remaining members of the board reconvened; that another Democratic member, Frank H. Bacon, became ill to such an extent that he died within two weeks after such election day, and, although there was difficulty in keeping such election board together, this respondent denies that there was any fraud practiced, any illegal voting done, or any ballots cast by other than legally qualified voters residing in the township of Sunfield, and that all the votes so cast for said contestant were counted for him; that the contestant received his full quota of all such ballots, and that no ballots were in any way counted for this respondent that were not cast in his favor by legal resident voters of said township, and denies that there were any votes cast for contestant that were counted for this respondent; and alleges that contestant received every vote cast for him at such election, and that the result of such election was in

no ways changed by reason of the conduct, actings, or doings of said board or of any other person, and alleges that the act of said Democratic members of said election board in their attempt to obtain advice as to whether they could adjourn, or in the action of the chairman of said board in retiring to his home for sleep and refreshment, were in no way in the interest of this respondent.

This respondent further answering denies that the ballots or ballot boxes in said voting precinct were tampered with by any person whomsoever, or that there are any tainted or illegal votes among the votes cast for this respondent in this precinct, and declares that such election was fair and just in all particulars, and that the rights and interests of contestant were safeguarded and protected upon all sides by the election officers who were then and there favorable to the contestant and willing to do all they could legally do to aid and assist the election of contestant, and insists that the action of the Democratic members upon said board should not be allowed to disfranchise the votes cast by the legal citizens and voters of this township in favor of the respondent. This respondent further answering says that the proper, necessary, and legal announcement was made as to the opening and closing of the polls, and denies that none of said board of inspectors of said township of Sunfield were continually present during the canvass of the votes.

This respondent denies that the canvass of said votes in said precinct was not a public canvass, or that it was fraudulent or illegal or void; or that at 5 o'clock a. m. on the 6th day of November, 1912, said board disbanded without first having made a statement and declaration of the result of said election in said precinct as required by law; this respondent further answering denies that the members of said election board agreed among themselves to meet at the office of said Frank H. Bacon (one of the Democratic members of said board of inspectors at said election) for the purpose of making out and signing the statements of the result of said election, or that the statements of the result of said election were brought to the office of said Bacon already made out; or that the statements were not made out in the presence of the board of inspectors; or that the said board of inspectors signed said statements without knowing whether the statements were true or false; or without knowing whether said statements gave the correct count of the results of the vote cast in said precinct for the office of Representative in Congress; and denies that said statements were fraudulent, or that there was any fraud in dating the statements on the day of election instead of the day on which the count was concluded; and alleges that the inspectors are not required by the law to make the statements and returns immediately on closing of the count, but alleges that the law requires that such statements and returns be made within 24 hours after the public declaration of the result; and alleges that there is no particular place mentioned where such statements and returns are required to be made; and alleges that it would not invalidate said returns providing they are finally correct if they were made out and signed at different places within the polling places, or in any adjoining rooms, or even if they had been on this occasion made out by clerks who prepared the returns and statements and laid them before the board for their ratification at the office of the justice of the peace, said Frank H. Bacon, at any time within 24 hours after their public announcement of the result of the election. Respondent alleges that the only material inquiry is as to whether the statements and returns were true, and there is no allegation in the notice of contest of any known false statement in any one of the returns and statements from this precinct. Respondent further alleges that such returns were made out correctly and contained a correct statement of the entire vote of such precinct, and such statements are signed by the Democratic members of the board who were then and there politically opposed to the election of respondent. Respondent further denies that the statements were falsely dated November 5, 1912, for the purpose of concealing the unlawful conduct of said election board; and denies that if said statements and returns were not made out until the forenoon of November 6, 1912, the act of the board in dating the statements and returns November 5, 1912, was illegal, and alleges that said act was wholly immaterial and that the time of making out and dating such statements and returns is wholly immaterial as it appears that in any event the statements and returns were made out within the time limited by law, which is 24 hours after public announcement of the result of the election. Respondent further denies that the said board of inspectors did not publicly declare the result of said election and the number of votes received by each person who was a candidate for Representative in Congress, as required by law.

Third. Respondent admits that in the township of Carmel, in the county of Eaton, on the face of the returns the board of election inspectors gave to respondent 55 votes more than to contestant; but denies that said returns were illegal and wholly void, and says that the ballots cast for the respondent in said township of Carmel were ballots legally cast by the qualified electors of said township for the respondent, and that no more votes were given to him by the board of election inspectors than were actually and legally cast for him by the legally qualified electors of said township, and that said contestant received full credit for every vote which was legally cast for him at said election of said township of Carmel. Respondent alleges that an emergency arose in said township which was not foreseen by the township officers. The ballot for officers voted for at this election was a very large paper, and by 2 o'clock in the afternoon of said election day the ballot box in which were deposited the ballots given for officers was so filled that no more ballots could be pressed into the box, and voters were present desiring and offering to vote; and upon a discussion of the question it was agreed that the board might open the ballot box and empty the ballots upon a table and replace the box for the reception of ballots from the voters and that the balloting should proceed, and the ballots removed should then be counted by one of the inspectors, aided by two responsible and law-abiding citizens, selected as nonpartisan for that purpose, and that the ballots should be so canvassed and counted and credited to the proper officers of each ticket, and that when the polls should close the ballots thereafter cast should be counted and added to the votes, to make a correct count of the entire number of votes cast for each officer during the whole of the day. Some of the leading Democrats of the township of Carmel and elsewhere were present and had full knowledge of the agreement, and no one in that township objected to the proceedings, which in that emergency seemed the only way that could be invented at the time to enable the remaining voters desiring to vote to deposit their ballots; the residents surrounding the polls at the time, no matter what party they belonged to, were law-abiding, reliable citizens and all electors of Carmel township, and no one had any thought of creating any fraud or wronging any candidate whose name appeared upon any one of the tickets, and the count was absolutely fair and correct and in no way could be alleged to be in the interest of this respondent. The respondent alleges that the rights of himself and the rights of the contestant were as carefully looked after and the vote as carefully canvassed for each as in any precinct in the district. And this respondent had no one present at that election who was appointed, employed, or engaged by him to represent him at such voting place during the day of election. Respondent alleges that there was an entire absence of fraud in the conduct of said election, and that the action of the board did not create any advantage in his favor, and denies that there was any fraud committed by said board in the canvass of said votes, and denies that said contestant was in any way injured, prejudiced, or defrauded in any way of his right or of a single vote because of such premature count. Respondent further denies that in violation of the law said board called new men within the railing who had no right or authority to handle the ballots, or that any such men, with one of the inspectors, at the hour of 2 o'clock p. m. did commence to count the ballots while the election was being carried on, and alleges that the action so taken by said board of inspectors was not illegal and was not taken in the interest of this respondent any more than in the interest of the contestant; that all action was taken by agreement, as aforesaid, and under the circumstances the law will not invalidate their acts and allow them to thus disfranchise the legal electors of said township of Carmel. And respondent admits that the township of Carmel and the voting place thereof is situated about 3 miles from the city of Charlotte, where the respondent resides, and about 50 miles from the city of Kalamazoo, where contestant resides; but alleges the truth to be that the contestant was well known and advertised in said township, and that he had made an active campaign through the said county as the Democratic candidate for Representative in Congress, and that he had at such polling place in said township of Carmel representatives looking after his interest during the election, and that this respondent had no helpers employed, engaged, or authorized by him at such place to represent himself or to look after his interest in said election, and that respondent knew nothing whatever as to the proceedings had by said board and was not in any manner a party to the conduct of the election board in carrying on said election; and denies that the act of said board in prematurely canvassing the votes cast by the electors at such voting place, if any such act occurred, in any manner increased the number of votes of this

respondent or in any manner prejudiced the rights of said contestant. And respondent further denies that the canvassing of the votes cast by the electors of said township was not performed by the board of inspectors, or that said board of inspectors never canvassed the vote in said precinct or never counted the ballots so cast, or that the returns or statements of votes made by said inspectors were not made upon their own knowledge, and denies that the returns of said election were void or of no legal effect. The respondent further states that one Rosslyn L. Sowers was one of the political managers in Eaton County for said contestant, and that he made speeches for him throughout the district and has resided in the city of Charlotte for a number of years, and that prior thereto he resided in said township of Carmel and was well acquainted with all the voters in said township, and that the interests of said contestant were well represented in such township both at the polls and prior thereto.

Fourth. This respondent denies that in violation of the rights of contestant and the laws of the State of Michigan that on numerous occasions or upon any occasion while the election was in progress on November 5 in said congressional district, in the precincts of Carmel, Bellevue, Benton, Eaton, Roxand, Windsor, First, Second, Third, and Fourth wards of the city of Charlotte, certain of the inspectors in the respective voting precincts wrongfully, wilfully, or unlawfully entered the voting booths with several of the voters or with any of the voters while said voters were in the booths preparing their ballots; and denies that said inspectors did not, before entering the booths or at any other time, require the voters who could not read the English language to make oath that they could not read or were physically unable to mark their ballots, or that said voters did not appear to said inspectors before entering the booths to be unable to mark their ballots, or that it was not made manifest to the inspectors that the voter was under a disability such as to make him unable to mark his ballot; and that no inspector entered the booth to assist the voter in any manner in these precincts when not in the presence of the challengers of each political party having challengers at such voting place and in strict conformity to the requirements of section 3642 of the Compiled Laws of 1897 of the State of Michigan; and respondent alleges that the allegations in this paragraph of the notice of contest is so general and indefinite that it is hard to negative any specific act; and he denies that any of the board of election inspectors in any of the voting precincts mentioned in this paragraph did at any time during this election enter the booths and assist in marking the ballots or in any way urge a voter to vote upon any particular ticket for any officer on the ballot; and denies that any act of any inspector of election in any of the precincts named induced any voter to cast a vote for respondent or in any way affected the result of said election.

Fifth. This respondent admits that John C. Nichols is an attorney at law, residing in the city of Charlotte, and was a candidate on the county ticket of Eaton County for the office of circuit court commissioner at the election on November 5, 1912, and that he was personally present in the voting place in the second ward in the city of Charlotte on election day, but denies that he was then and there promoting the interest of or endeavoring to secure the election of this respondent or that said Nichols then and there solicited or attempted to persuade any of the legal voters in said precinct to vote for this respondent. This respondent admits that said Nichols was the challenger for the Republican Party in the second ward of the city of Charlotte, which secured him a position inside the railing of said polling place, and alleges that he has the legal right to act as such challenger; and that there is nothing in the statutes of Michigan which prohibited him from acting as a challenger for his party if legally appointed to that place; but respondent denies that said Nichols acted as inspector of election, or as clerk of the election, or as any kind of election officer in said precinct at said election except as challenger, as aforesaid. This respondent denies that said Nichols had no right to be within the railing for not other purpose than casting his vote, or not exceeding five minutes. This respondent denies that the presence of said Nichols within said railing of said precinct was fraudulent, wrong, or illegal, or that the acts of said Nichols in said voting place as aforesaid in any way invalidated the votes cast therein or that his action as such challenger invalidated the ballots cast thereat. Respondent alleges that by section 34 of the charter of the city of Charlotte, which was Act No. 379 of the local acts of Michigan for the year 1895, the two aldermen of each ward shall constitute the board of inspectors

of election for their respective wards at all elections, and such board is empowered to appoint such number of clerks, gate keepers, and officers as shall be necessary to comply with the election laws of the State. At the election in question the second ward of the city of Charlotte held its election in the lobby in the basement of the courthouse, and the space for the officers and the voting booths was very much restricted, and the two inspectors of election had to stand close together, one of the inspectors delivering the ballots to the voters and the voter passing by him into the booths and returning into the same inclosure, handing their ballots to the other inspector, who deposited the ballot in the box. The challengers were also in this small inclosure, and the inspectors and challengers stood within the railing together. The clerks of the election and gate keepers were also within this railing; the booths were of canvas, and every word that would be uttered by any of the officers could be plainly and easily heard at all places within the railing, and likewise the delivery of the ballots and the depositing of the ballots were within the view of all the people surrounding the booths. By a regulation of the city of Charlotte the entire members of the board are not permitted to adjourn at noon, but are obliged to keep the polls open from the morning hour until 5 o'clock p. m.; that during the progress of the election one of the inspectors, an alderman of the second ward, H. A. Hamilton, was taken violently ill while the booths were full of voters, and other voters were pressing for admission; the other inspector had all he could do to pass out the ballots as the voters required them and more than he could attend to at the same time to deposit the ballots of the voters as they came out of the booths after his coinspector left the polling place on account of his severe and sudden illness; the remaining inspector, Claude C. Knowles, an alderman of the second ward, spoke to said John C. Nichols, who was standing close by him and the ballot box, and asked him to receive the ballots from the voters, call out the names, and deposit the ballots in the ballot box, which was in plain view of the officers of election and the public there assembled, while the alderman sent for a competent man to take the place of the inspector, Alderman Hamilton, who went to his home on account of illness, and within a very few minutes secured and appointed a competent citizen, one Roy Barber, as inspector, and he was sworn in as inspector of election and took his place at once in the place of Alderman Hamilton; and the said John C. Nichols only received a very few ballots, and never opened or examined a ballot or performed any act other than to deposit the ballot in the ballot box in the presence of Alderman Knowles, under his eyesight, and in presence of the remaining officers of the board, the challengers of the respective parties, and the general public at large. Respondent alleges that said John C. Nichols had no opportunity whatever to manipulate, change, or alter, examine, or open any ballot which he deposited or which he received in his hand. Respondent alleges that Ernest G. Pray, who has been county clerk of the county of Eaton, was nominated by primary election as the candidate for representative in the State legislature upon the Republican ticket; prior to said election he resigned as county clerk because of a constitutional provision which prohibits him from holding that office while holding any county office; and that John C. Nichols had been deputy county clerk for some time under said Ernest G. Pray as clerk of said county, and that John C. Nichols had been deputy county clerk for preceding county clerks and was familiar with the business required of the county clerk in the courts and in county business generally; and that the circuit judge of the county of Eaton forthwith appointed said John C. Nichols as county clerk in place of Ernest G. Pray, resigned, and on said election day said John C. Nichols was then and there the duly qualified and acting county clerk of said county; but this respondent denies that there was any illegal or designed scheme between said Pray and said John C. Nichols in the making of said resignation and appointment, and denies that such appointment of said John C. Nichols as county clerk was done for the purpose of promoting the interest of John M. C. Smith as candidate for the office of Representative in Congress, and denies that it gave said John M. C. Smith in any way, directly or indirectly, any advantage in his candidacy for such office, and denies that it gave any advantage to him to have the said John C. Nichols have the custody of the sealed envelopes containing the election statements and returns of the several boards of inspectors of the various precincts of said county for the board of county canvassers, giving said Nichols the opportunity by the abuse of said secretly acquired office of having access to said sealed envelopes containing the statements and returns which were in his custody as county clerk, for it became the duty of said

John C. Nichols, on receipt of said returns, to immediately make them public by opening the sealed envelopes and placing the returns on file, where they became public documents and were open to inspection to the friends or political enemies of the respondent, and they were documents directed to said John C. Nichols as county clerk of said county, and no advantage could be taken of his having custody of those statements and returns, for duplicates were in the hands of the judge or register of the probate court, which were to be delivered by such officers to said board of county canvassers on the first day of their meeting as aforesaid, and there was no opportunity whatever for anyone to change a figure or line of said statements or returns without its being immediately visible and easily corrected by a comparison with the duplicates belonging to the board of county canvassers. Respondent denies that John C. Nichols appeared before said board of county canvassers and acted as representative for said respondent, but says that said John C. Nichols was ex officio clerk of said board of county canvassers and was in no way appearing in the interest of this respondent.

Sixth. Respondent admits that in said election in the township of Hamlin, in said county of Eaton, the respondent was given 10 votes more than the contestant by the board of election inspectors of said township; but denies that the election in said township of Hamlin or the returns were void or a fraud upon the rights of contestant, or that said election or the canvass of votes therein was by the board of inspectors unlawfully, illegally, and wrongfully conducted, or that said contestant was in any manner prejudiced thereby of his right in the premises. Respondent denies that the election inspectors of said township ignored or violated the law in the conduct of said election, or in the counting of the votes therein; or that after counting a portion of the ballots cast at such election at 12 o'clock, midnight on said election day, adjourned the canvassing of the remaining votes cast at such election until the forenoon of Wednesday, the 6th day of November, 1912, without any legal right to so adjourn, or that the board of election inspectors or any members thereof at the hour of 12 o'clock, midnight of said election day, went away from said polling place and left the ballot boxes unsealed or unlocked, or did then and there leave the ballots cast for the office of Representative in Congress unprotected and exposed, or did then and there take no precaution to protect said ballots from being wrongfully and fraudulently tampered with; or that one of the members of said board of election inspectors illegally returned to the polling place and proceeded to count and canvass the balance of the ballots in private, or did then and there handle any of the ballots or tally sheets used in said precinct in private for one hour or during any other length of time while no other member of said board of election inspectors or any other person was present in said polling place. Respondent alleges that Ancil Holmes is the supervisor of said township of Hamlin, and as such officer is ex officio chairman of the board of election inspectors, and that said Ancil Holmes is a Democrat and was politically opposed to the election of respondent, and that no action of the township board could or would be taken to give respondent any advantage in the counting of the ballots as between himself and contestant; and that all action taken by said board of election inspectors was in every instance taken upon the advice and direction of the chairman thereof, said Ancil Holmes.

This respondent further alleges that the ballots cast in said township of Hamlin were all cast by legally qualified electors in said township, and that said contestant was credited with all votes cast for him, and that respondent was credited with no votes cast for contestant; and that the returns made by said board of inspectors were proper and contained a correct statement of the ballots cast for contestant and for respondent, and that the contestant was not deprived of a single vote or any of his rights in the premises on account of the acts and doings, or conduct of said board of inspectors in said township of Hamlin, and that even if an adjournment was had, no injury or fraud resulted therefrom and none of the rights of the contestant were infringed upon, and the same would not in any way invalidate the votes or disfranchise the voters of said township of Hamlin.

Seventh. This respondent denies that prior to said election held November 5, 1912, in and throughout said county of Eaton, in said congressional district, an agreement was entered into by and between certain members of the Republican Party and certain members of the Republican committee in and of said county, with certain members of the Progressive Party and members of certain

committees of said Progressive Party in said county of Eaton, whereby it was agreed that the Republican Party would not bring any speakers into said county of Eaton during the political campaign preceding said election to make speeches for and on behalf of the reelection of President Taft on the Republican ticket, in consideration of which it was further agreed between the aforesaid parties that the Progressive Party would support the entire Republican county ticket in said county, and would also support this respondent for Representative in Congress at said election November 5, 1912; and denies that for the purpose of seeing that the members of the Progressive Party did support the candidates for the various county offices, in said county of Eaton and this respondent for Representative in Congress in said election, various of the inspectors and other officers of said election precincts in said county of Eaton, and particularly in the second and third precincts of the city of Charlotte, in said county of Eaton, on said election day, did urge upon divers and sundry voters in said precincts, and in said two precincts last above mentioned, the aforesaid agreement, and by such means and other unlawful means exerted on said election day upon divers and sundry voters in said various election precincts, and within the railing within the voting place wrongful, persuasive, and fraudulent means were used for and on behalf of this respondent, to the detriment, loss, and injury in said election of said contestant, or in violation of the laws of the State of Michigan, as alleged in said notice of contest; and denies that for the purpose of seeing that the aforesaid agreement was being performed by the members of the said Progressive Party in the various precincts hereinbefore in the notice of contest alleged, certain of the said inspectors of election and members of the election boards, or other persons, did and were permitted to talk within the said railing to voters before casting their ballots in said various election places, or with certain other voters within the booths in said election places, before said voters marked the ballots which they subsequently cast at said election, as alleged in said notice of contest. Respondent further denies that there were any such acts or doings on the part of said inspectors, members and officers of said election board and others, or that there was any permission for improper talk with said voters within the railing and in the booths of said election place and places in said county of Eaton, which were in violation of law or which invalidated the ballots cast in said precinct at said election, which made all the ballots cast for the said respondent for Representative in Congress, and which were cast for him at said election in said precincts absolutely null and void, as the said contestant has in the seventh subdivision of his said notice of contest alleged.

And respondent further answering alleges that all of the speakers of the Republican Party in said county of Eaton during the campaign of 1912, notably United States Senator William Alden Smith, Hon. Washington Gardner, State Senator William M. Smith, Hon. Grant Fellows, attorney general of Michigan, Judge Kelly S. Searl, Hon. Patrick H. Kelley, Congressman at large from Michigan, Hon. Colon P. Campbell, in their several talks and speeches through said county of Eaton advocated the reelection of President Taft.

Respondent further alleges that the Republican county committee for the county of Eaton carried on an active and vigorous campaign especially directed to the support and reelection of President Taft, and caused to be prepared an expensive campaign banner, which was suspended across the main business street of the city of Charlotte during the last few weeks preceding said election, upon which was a large picture of President Taft surrounded by the following words: "Vote for Taft and continue prosperity." and upon the other end of the banner was also a picture of Hon. Amos S. Musselman, Republican candidate for governor. And the said committee distributed literature throughout said county explaining the policies of President Taft and urging his reelection.

Respondent further alleges that he campaigned the county of Eaton and the entire third congressional district of Michigan during the fall of 1912 in behalf of the Republican Party and of his own candidacy, and gave his best efforts in supporting and advocating the reelection of President Taft and the entire Republican ticket, and advised all former Republicans to support the entire Republican ticket instead of giving any support to any part of the Progressive or Democratic tickets. Respondent further alleges, upon information and belief, that there was a close agreement and understanding between the contestant and Hon. Edward N. Dingley, his fellow townsman, who was then and there a candidate at said election for Representative from said third congress-

sional district on the Progressive Party ticket; that the said contestant and the said Edward N. Dingley should aid and assist each other in their respective campaigns against this respondent, and alleges that the said contestant furnished the use of his own automobile to said Edward N. Dingley for the latter to use in conducting his campaign for said office through said congressional district, which said action of the said contestant and the said Edward N. Dingley was certainly no advantage to this respondent, but was intended to defeat this respondent if they could accomplish this result by such collusive agreement and understanding. Respondent further alleges that in carrying out this scheme said Edward N. Dingley made a vigorous campaign in the counties of said congressional district, and made speeches in nearly every election precinct in the county of Eaton, and made a strong personal campaign in said county of Eaton and urged all of the Republicans to whom he could gain access to support the Progressive ticket and especially to support him, said Dingley, for the office of Representative in Congress for said third congressional district, with the result that he carried the county of Hillsdale and reduced the majorities of this respondent in every county in the district, and in the county of Eaton said Edward N. Dingley received, as shown by the returns of said election, 1,405 votes. This respondent further alleges that at the election for Representative in Congress for said third congressional district, in November, 1910, Hon. Nathaniel H. Stewart, the Democratic candidate for that office, was given 2,159 votes in said county of Eaton, while in the election of 1912, in the same county, the contestant, with two principal opponents, was given 2,390 votes, as shown by said notice of contest.

This respondent further alleges that the Hon. Edward N. Dingley at said election on November 5, 1912, was given the following votes in the respective counties of the district, viz: Kalamazoo, 3,465; Calhoun, 3,863; Eaton, 1,405; Branch, 1,551; Hillsdale, 2,623; total, 12,907.

Elighth. In answer to subdivision eighth of said notice of contest, this respondent denies each and every allegation of irregularity in conducting the election and counting the vote on November 5, 1912, in the said precinct of Union City, in the county of Branch, in said congressional district, and denies that the board of election inspectors in that precinct, after commencing to canvass and count the ballots cast in said precinct at said election, made any adjournment or abandoned the polling precinct or left the ballot boxes and all the ballots cast at said election and the tally and poll books used by said board without any precautions to protect the same, but alleges that when said board of election inspectors, at 5 o'clock p. m., on the 5th day of November, 1912, at the close of said election, announced the closing of the polls, it forthwith began to canvass and count the ballots cast at said election, and continued said canvass and count without interruption or adjournment and without any member of said board leaving the canvass and count until all the ballots cast at said election were canvassed and counted, and then and there said board did announce and publicly declare the results of said election, and did then and there without interruption or adjournment forthwith prepare a statement of the result in duplicate of said election, showing the whole number of votes cast for each office, the names of the persons for whom such votes were given, and the number each person received, in which statements the whole number of votes given for the office of Representative in Congress for the third congressional district of Michigan and the number of votes given for each candidate was written out in words at length, and which statements when so prepared were duly certified and signed by said inspectors of election and delivered to the township clerk, who within 24 hours after the result of such election was declared forwarded by registered mail one copy to the board of county canvassers in care of the judge or register of probate, and the other duplicate copy, together with one of the original tally sheets, to the county clerk of said county of Branch, which said duplicate statements and tally sheets were placed in separate envelopes and sealed by said inspectors before their delivery to the township clerk as aforesaid. And this respondent further alleges that all of the acts and doings of said board of election inspectors at said election, in the counting and canvassing of the ballots, announcing and declaring the results of the election, making out, executing and delivering the required statements, preparing the sealed packages, fully conformed to all statutory requirements and regulations governing this part of the proceedings. Respondent admits that the said statements of the votes cast at said election in said precinct gave to the respondent 67 votes more than were given to the contestant, and says that no more votes

were given to said respondent than were legally cast for him at said election by the legally qualified electors of said township.

Ninth. In answer to subdivision ninth of said notice of contest, this respondent admits that the first returns of the election board of the second precinct of the second ward of the city of Battle Creek, in the county of Calhoun, showed that only 31 votes were cast for this respondent and 23 votes for the contestant, but alleges that it was evident from the face of the returns that many votes had been omitted by mistake from such returns, for it appeared from the tally sheets accompanying said returns that more votes had been cast for this respondent and said contestant than were stated in the returns, whereupon the board of county canvassers, after examining such returns, poll books, and tally sheets, determined, in its judgment, that the returns already made in said case were incorrect and incomplete, and, acting under the provisions of section 4 of act No. 43 of the Public Acts of Michigan, of 1905, said board of county canvassers did then and there summon the board of election inspectors of said second precinct of the second ward of said city of Battle Creek to appear before the said board of county canvassers with the ballot boxes, keys, seals, returns, poll books, tally sheets, the ballots cast at said election, and papers used and made at such election; and said board of election inspectors, obeying said summons, did appear before said board of county canvassers having with it the boxes containing the ballots cast at said election, the keys and seals of said boxes, and the returns, poll books, tally sheets, and papers used and made at such election, from which the incorrect returns had been made; and thereupon said board of election inspectors, acting under the express command and summons of said board of county canvassers, and being expressly authorized by it so to do, did then and there open said ballot boxes and take therefrom all the books and papers therein contained bearing upon the count and return of said election inspectors of such election, but did not remove or mark any of the ballots therein; and said board of election inspectors, under the requirements and authority of said board of county canvassers and under the provisions of said statute, did make and complete a correct return of the votes cast in said precinct at such election for the office of Representative in Congress for the third congressional district of the State of Michigan, by which correct returns it appeared that respondent received 97 votes and the contestant only received 61 votes for such office. And respondent alleges that he was not given credit in said corrected returns for any ballot which was not legally cast for him in said precinct by a legally qualified voter thereof.

Respondent admits that said board of county canvassers made their statement and return as to this precinct based upon said corrected returns therefrom and alleges that, under the law cited, they had no discretion to do otherwise. The respondent alleges that said notice of contest was unfair in that it concealed the fact that the corrected returns were made under the command and direction of the said board of county canvassers, which was expressly authorized and compelled to proceed in the premises as it did.

Tenth. Respondent admits that in the canvass and return of the votes cast at said election in the township of Climax, in the county of Kalamazoo, there was an apparent discrepancy; that the number of votes credited to the candidates for the office of Representative in Congress was less than the total number of votes shown to have been cast by the tally books; but respondent denies that the number of votes alleged to have been omitted from the count was 49; respondent further alleges that when the board of county canvassers convened and proceeded to canvass the returns from said township of Climax the board discovered that there was an apparent error in the returns and that some ballots must be missing from the vote given for the office of Representative in Congress, and discussed the matter of proceeding under the statute cited in the preceding paragraph and expressed the opinion that it should summon before it the board of election inspectors from said township of Climax, with the boxes containing the ballots cast at said election, the keys and seals of said boxes, and the poll book, tally sheets, returns and papers used and made at such elections, and require such board of election inspectors to correct its returns. Respondent further alleges that said contestant was then and there present and objected to said board of county canvassers taking any such action, and threatened said board of county canvassers with legal prosecution if it proceeded to take any action to have said returns corrected, and insisted that said board had no legal power to order said board of election inspectors to come before it, and that said board of county canvassers had no legal authority

to order said board of election inspectors to open said ballot boxes or to proceed to recount said ballots, and absolutely forbade said board of county canvassers to take any such action. Respondent further alleges that he was not given credit in this precinct for any votes which had not been legally cast for him at said election by the legally qualified electors of said precinct; and respondent denies that 35 votes were cast in said precinct for the contestant which were not credited to and counted for said contestant.

Eleventh. Respondent admits that the results show the votes cast respectively for respondent and contestant are as set forth in subdivision eleventh of said notice of contest, except that respondent alleges that the returns do not correspond with said notice of contest in the precincts of Sunfield, second precinct second ward of Battle Creek, and Union City.

And this respondent further answering said notice of contest says that the same irregularities that are set up in said notice occurred in the other counties of the district in the election precincts where the contestant received his majorities, and, applying the same rule the contestant seeks to have applied to the several precincts of Eaton County, to have rejected and thrown out the votes cast for this respondent, many more votes than those objected to by the contestant in his notice would have to be deducted from the votes accredited to the contestant.

Kalamazoo County.—For instance, the said county of Kalamazoo, in which the contestant resides, has a large foreign population, and very many voters were instructed within the booths and assisted in marking their ballots by the several inspectors of election and others on numerous occasions while said election was being conducted on said 5th day of November, 1912, in said third congressional district in said county of Kalamazoo in each of the following several election precincts, to wit, the second precinct of the township of Comstock, Cooper, township of Kalamazoo, Ross, Schoolcraft (first precinct), Texas, Wakeshma, Alano, Brady (first precinct), Brady (second precinct), Charleston, and the first, second, third, fourth, sixth, seventh, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth election precincts of the city of Kalamazoo, in all of which election precincts the election boards respectively returned to the board of county canvassers of said county of Kalamazoo more votes for said contestant than for this respondent, and in each one of said election precincts certain of the inspectors therein entered the election booth with several of the voters and while said voters were in said booth preparing their ballot were present and assisted in preparing such ballot; that in no instance during said election did any of said inspectors before entering said booth or at any other time require said voters or any one of them to make oath that they (said voter or voters) could not read the English language, nor did said inspectors require any one of said voters to make oath that he (said voter) was physically unable to mark his ballot, nor was any voter with whom said inspectors entered said booth apparently unable to mark his ballot; that the acts of said inspectors in so as aforesaid entering any booth with any such voter without administering the required oath gave the opportunity for said inspectors or other persons to scrutinize said ballot and learn for whom said voter was casting his ballot, and gave said inspectors the opportunity to influence said voter to vote as the said inspectors desired, and if any votes for this respondent are rejected and thrown out for like reasons in said county of Eaton this respondent alleges that these votes cast for the contestant in these election precincts of said county of Kalamazoo should also be rejected and thrown out, and this respondent requests that the same may be done.

Respondent further shows that said contestant by the returns from these several precincts in said county of Kalamazoo was given 720 votes more than were given to this respondent, which, for reasons above given, should be deducted from the total vote given said contestant in said district.

Calhoun County.—Respondent further alleges that while said election for Representative in Congress for said third congressional district of Michigan was being conducted in the second ward of the city of Marshall, in the county of Calhoun, in said district, one Jay Hatch, who was then and there a candidate at said election for prosecuting attorney on the national Progressive ticket, and who then and there claimed to be one of the official challengers of said Progressive Party, but who was not then and there a member of the board of election inspectors of said election precinct, did then and there, without any legal authority, enter a voting booth with a voter and remain therein until said elector had prepared his ballot, he, said Jay Hatch, having an opportunity to

watch said voter prepare his ballot, and which ballot, when so prepared, said voter presented to one of the inspectors of election for voting, and which ballot said inspector of election deposited in the ballot box; and said board of election inspectors did not require said voter to take the necessary oath nor did said voter make oath before entering said booth with said Jay Hatch, or at any other time, that he, said voter, could not read the English language or that he was physically unable to mark his ballot, nor was said voter then and there apparently unable to mark his ballot; and the said board of election inspectors permitted said Jay Hatch to thus unlawfully enter said booth with such voter; and respondent alleges that other instances occurred in this election precinct of like nature where said board of election inspectors permitted other voters to enter the booth and permitted other persons, without legal right, to enter said booth with such voters to assist said voters in marking their ballots, and in no case was the voter required to make the necessary oath to warrant him any assistance in the marking of his ballot, which act and acts of said board of election inspectors, under the rules invoked by the contestant, vitiated and would make void said election in said election precinct, and the respective statements and returns to the board of county canvassers of said county of Calhoun void and of no legal force and effect; and respondent further alleges that by the returns said contestant received in this election precinct 114 votes, the respondent received 71 votes, and said Edward N. Dingley received 62 votes, and if the contention of contestant is upheld, then the vote from this election precinct should be rejected and thrown out under like rules cited by the contestant. And the respondent alleges that no oath was administered to the voters given assistance in marking their ballots in the first, second, and fourth wards of the city of Albion, in said county of Calhoun, in which precincts contestant received a plurality of 27 votes in the first, 49 in the second, and 65 in the fourth wards of said city, and under the rule invoked by contestant the votes of these several wards should be rejected and thrown out.

Hillsdale County.—And this respondent, further answering, alleges that the same practice was followed in Hillsdale County in relation to the disposition of the several statements and returns from the several boards of election inspectors to the board of county canvassers in said election held in said district on said 5th day of November, 1912, as was pursued in said county of Eaton.

First. The said several boards of election inspectors in said county of Hillsdale, in each election precinct thereof, at said election, made out the required statements and returns of said election in duplicate, and inclosed them in separate envelopes under their respective seals and forwarded them by mail or delivered the same in person, one copy to the board of county canvassers in the care of the judge of probate and the other copy to the county clerk of said county.

Second. The county clerk of Hillsdale County, Frank O. Hancock, upon the receipt of the respective returns at once opened them all and tabulated them ready to be used by the board of county canvassers when it should convene to canvass the votes, and said returns were then and there public records in the office of the said county clerk and open to the inspection and examination of any interested person, and were examined and inspected by representatives of newspapers and the public generally, and applying the same rule and procedure that is requested by contestant in his notice of contest the returns from said county of Hillsdale should be held to be illegal and the votes given to the contestant by those returns should be rejected and thrown aside. And respondent further alleges that by the returns of the board of county canvassers of said county of Hillsdale said contestant was given 2,242 votes, respondent 1,897 votes, and Edward N. Dingley 2,623 votes, thus giving the contestant 345 votes more than were given to this respondent in said county of Hillsdale.

Third. Further answering respondent says that it appears by the said notice of contest and in this answer that when any election board adjourns, it is directed by the election laws of Michigan to seal the ballot box, and the key to be delivered to one of the inspectors, the box to another, and the seal to another, but alleges that in township of Allen in said county of Hillsdale, at said election, when the board of election inspectors adjourned for the noon hour the ballot box was not sealed as required by law and the key was not delivered to one of the inspectors, the box to another, and the seal to another, but as a matter of fact said board adjourned for one hour and took the ballot box with them out of the polling place to the place where they had dinner, and the box was left in its condition of being unsealed without any protection to prevent

tampering with the ballots. Respondent further alleges that the law provides that to seal a ballot box a piece of leather or canvas shall be so placed as to extend from the opening of the lid of said ballot box to the keyhole in such a manner as to completely cover both such holes, and the same securely fastened thereon with sealing wax, and stamped with the official election seal of the voting precinct, such piece of leather or canvas and the sealing wax to be arranged so as to render it impossible to open either of said holes without breaking said seal. Respondent alleges that this statutory precaution was not obeyed by the election inspectors of the township of Allen, and the unused ballots of said election were not properly and legally protected, so that designing persons had the opportunity to easily tamper with the ballot box and with the unused ballots. And respondent further alleges that said board of election inspectors by its returns to the board of county canvassers of said county of Hillsdale gave to said contestant 18 votes more than it gave to this respondent. The respondent further alleges that applying the same rules invoked by the contestant the vote of this precinct should be excluded.

Fourth. This respondent further answering alleges that in the township of Wright in said county of Hillsdale, at said election, the board of election inspectors therein did adjourn one hour for dinner, and, like the board of election inspectors for the township of Allen, did not seal the ballot boxes but said ballot boxes and the unused ballots were left during the noon hour in care of some person other than an inspector, and that by the returns of said board of election inspectors to the said board of county canvassers of said county of Hillsdale said contestant was given 117 votes more than were given to this respondent. Respondent therefore alleges that under the rules mentioned, invoked by the contestant in his notice of contest the election in this precinct was wholly void and should be excluded from consideration in the computation of the votes given for the office of Representative in Congress from the said third congressional district.

Fifth. This respondent further answering alleges that in the township of Woodbridge in said county of Hillsdale, at said election, the board of election inspectors therein did adjourn one hour for dinner, but did not seal the ballot boxes and dispose of them as required by law, and did not for the protection of said ballot boxes and the ballots unused lock said boxes and seal the same and deliver the box to one inspector, the key to another, and the seal to another, but the polling place was left unprotected, so that designing persons had the opportunity to tamper with the ballot box and unused ballots, and that by its returns to the board of county canvassers of said county of Hillsdale said contestant was given a majority of 43 of the votes cast. Respondent therefore alleges that under the rules mentioned, invoked by the contestant in his notice of contest, the election in this precinct was wholly void and should be excluded from consideration in the computation of the votes given for the office of Representative in Congress from the said third congressional district.

Sixth. This respondent further answering alleges that in the township of Cambria in said Hillsdale County, at said election, the board of election inspectors therein took a noon adjournment and did not comply with the requirements as to sealing the ballot box, but simply locked the box with the tally sheets inclosed and went away and left the ballot box alone in the building, simply locking the outer door of the building and taking no legal precautions for the protection of the ballot boxes or unused ballots, so that designing persons had the opportunity to easily tamper with the ballot box and with the unused ballots; that by the returns of said board of election inspectors to the said board of county canvassers of said county of Hillsdale, said contestant was given 65 votes more than were given to this respondent. Respondent therefore alleges that under the rules invoked by the contestant in his notice of contest the election in this precinct was wholly void and should be excluded from consideration in the computation of the votes given for the office of Representative in Congress from said third congressional district.

And respondent further alleges that as a further reason for excluding from consideration the votes given at this election precinct, one D. Payne, who was not then and there a member of said board of election inspectors, nor even a clerk thereof, and with no legal authority so to do, assisted in counting the ballots and keeping the tally sheets.

Seventh. This respondent, further answering, alleges that in the township of Camden, in said county of Hillsdale, at said election, after the polls closed at 5 o'clock and the canvass and count of the votes began, the board of election inspectors therein allowed and permitted the public promiscuously to enter

within the railing where the count was being conducted, and was then and there given the opportunity to discuss the count and give suggestions which materially affected the result of said election, and by the returns of said board of election inspectors to the said board of county canvassers of said county of Hillsdale said contestant was given 23 votes more than were given to this respondent. Respondent therefore alleges that under the rules invoked by contestant in his notice of contest the election in this precinct was wholly vitiated and made void and should be excluded from consideration in the computation of the votes given for the office of Representative in Congress from said third congressional district.

Eighth. This respondent, further answering, alleges that in the township of Moscow, in said county of Hillsdale, at said election, after the polls were closed at 5 o'clock p. m. the board of election inspectors therein began to count and canvass the votes cast at said election; that one Art. Smith, then and there one of said inspectors of election, became ill or otherwise unable to assist in making the count; still he attempted to help count the votes, whereupon one Fred Rice, who was then and there an entire outsider and not one of said board of election inspectors, nor a clerk thereof, and wholly without any legal authority so to do, came in behind the railing and assisted said Art. Smith in counting said votes; that said board of election inspectors adjourned for supper, but after supper said election inspector Art. Smith did not return and assist in counting the votes; that after the supper hour the counting of the votes was resumed and the two clerks of the election board assisted the inspectors in the handling and counting of the ballots, and afterwards made out the returns and statements of the result of the election, and the said Art. Smith returned and signed the returns as such election inspector, but without having any knowledge of what the returns contained and without being able to comprehend the result of said election. Wherefore under the rules invoked by the contestant in his notice of contest, said statements were made and signed by said board of election inspectors without its knowing whether said statements gave the correct count of the result of the votes cast in said precinct at said election for the office of Representative in Congress for said third congressional district, yet it appears by the returns of said board of election inspectors to said board of county canvassers of said county of Hillsdale that 57 more votes were given to said contestant than were given to this respondent. Respondent therefore alleges that under the rules invoked by the contestant in his notice of contest the election in this precinct was wholly vitiated and made void and should be excluded from consideration in the computation of the votes given for the office of Representative in Congress from said third congressional district.

Ninth. This respondent, further answering, alleges that in the township of Somerset, in said Hillsdale County, at said election, the board of election inspectors permitted and allowed voters to be accompanied into the booth and to be assisted in having their ballots marked without requiring said voters to make any oath as to the necessity of such assistance as required by law, and permitted voters to have their ballots marked while in the booth, but not in the presence of any inspector of election, and, among other voters, one Eugene Van Camp received a ballot from said election board and went into the voting booth accompanied by persons who were not members of the board of election inspectors, and had assistance rendered him, and his ballot was finally marked and he voted it, but the ballot was not marked in the presence of any inspector of election, neither was he required by said board of election inspectors, before entering said booth or at any other time, to make oath as to the necessity of his needing assistance in the marking of his ballot; that in this election precinct the regular ballot box, which was provided with a lock and key as required by law, became filled with ballots, and during the day the board constructed a temporary ballot box, using a dry goods or shoe box in which to receive the ballots, but said temporary box was not provided with a lock and key and there was nothing to hinder designing persons at any time from opening this temporary box and removing ballots therefrom or substituting ballots in place of those which had been lawfully cast, neither were any precautions taken to protect said temporary box from being tampered with by any designing person. Respondent also alleges that it appears by the returns of said board of election inspectors to said board of county canvassers of said county of Hillsdale that in this precinct 39 more votes were given to contestant than were given to this respondent. Respondent alleges that the loose and illegal

practices of said board of election inspectors tainted this election at this precinct with suspicion, in that the ballots cast were marked in the presence of those who were not members of the board and when not in the presence of any inspector of said board and open to the scrutiny of those who had the opportunity to urge the voter to vote for any particular candidate for Representative in Congress favored by such outsider, and the ballots being deposited in a box not conforming to the requirements of the law were subject to be withdrawn, altered, or tampered with by any designing persons. Respondent therefore alleges that under the rules invoked by the contestant in his notice of contest the election in this precinct was wholly vitiated and made void and should be excluded from consideration in the computation of the votes given for the office of Representative in Congress from said third congressional district.

Tenth. This respondent, further answering, alleges that in the township of Reading, in said county of Hillsdale, at said election, the election was held in the second story of the engine house, which upper room was the voting room of said election in that precinct, and in violation of the plain provision of the law voters who claimed to be physically incompetent to go upstairs to vote remained in the street and had the ballots brought out into the street to them, and were permitted to mark their ballots at the foot of the stairs on the sidewalk, and some of the inspectors attended these voters and after the ballots were marked these inspectors carried the ballots upstairs and deposited them in the ballot box while said voters were not in the voting room. Respondent alleges further with reference to this voting precinct that in the morning when the election started a number of men were permitted to cast their votes therein who were not registered in the said township of Reading and who had no legal right to vote at said election because they were not lawfully registered voters; these men were claiming the right to vote because they were registered voters in the village of Reading for village elections, although they were not registered voters within the township of Reading eligible to vote at said congressional election; that said board after discussing this matter for a time refused to receive further votes from those who were not registered in the township registration book, but many of these illegal votes had been received and placed in the ballot box by said board of election inspectors.

Respondent further alleges that in this precinct, when said board of election inspectors proceeded to count the ballots, an outsider, who was not a member of said board of election inspectors, but who was gatekeeper at this precinct, helped and assisted in handling the ballots and counting the votes.

And respondent further alleges with respect to this precinct that during the hours while the election was proceeding the first ballot box was filled, and said board of election inspectors, deeming another box necessary, improvised one out of a shoe or dry-goods box, which had no lock upon it, and used that box for the reception of ballots during the day, and the box was not locked and there was nothing to prevent any designing person opening said box at any time and substituting ballots for those which had been legally deposited therein.

And respondent further alleges with respect to this precinct that said board of election inspectors adjourned for dinner at noon and left said voting precinct and did not before leaving the voting place lock or seal the ballot boxes nor take any precautions to prevent the same being opened by any designing person, and thus full opportunity was afforded for any designing person to open the ballot boxes and remove or change any ballots already cast or substitute spurious ballots in place of those which had been deposited in said boxes by said board of election inspectors; neither were any precautions taken to protect said temporary ballot box or said ballot box upon which there was no lock from being opened or tampered with in the absence of said board of election inspectors during said adjournment. Respondent further alleges that it appears by the returns of said board of election inspectors to said board of county canvassers of said county of Hillsdale that in this precinct 61 more votes were given to the contestant than were given to this respondent.

Respondent therefore alleges that under the rules invoked by the contestant in his notice of contest the election in this said precinct was wholly vitiated and made void and should be excluded from consideration in the computation from the vote given for the office of Representative in Congress from said third congressional district.

Respondent denies that the contestant is entitled to the relief prayed for in his said petition and notice of contest or any relief in the premises, and alleges

that said election in each and every election precinct complained of in said notice of contest was fair and honest; that this respondent was duly and legally elected; that the certificate of election was properly based upon a clear plurality of the legal votes cast at such election and represents the will of the electors of said congressional district; and that the petition of contestant should be dismissed.

Dated this 1st day of February, A. D. 1913.

J. M. C. SMITH,
Contestee and Respondent
 HORACE S. MAYNARD,
Attorney for Contestee.
 W. H. FRANKHAUSER,
Attorney for Contestee.
 GRANT FELLOWS,
Of Counsel for Contestee.

OBJECTIONS TO THE AMENDMENT OF CONTESTANT'S NOTICE OF CONTEST.

To the House of Representatives in the Congress of the United States:

First. Now comes the respondent and contestant, John M. C. Smith, and objects to the printing or consideration of any testimony of any matter, fact, or circumstance not specifically stated and set forth in the notice of contest filed by the contestant in this case.

Second. And contestee further objects to the printing or consideration of testimony taken upon rebuttal of any matter, fact, or circumstance not stated in the original notice of contest filed herein.

JOHN M. C. SMITH, *Contestee.*

JULY 2, 1913.

It is stipulated between and by the undersigned attorneys for the respective parties to this proceeding as follows:

First. That each and every witness who was produced as appears by the foregoing typewritten record was duly sworn and his and her testimony was just as and when given on the witness stand taken down in shorthand by Joseph W. Stockwell, United States commissioner for the western district of Michigan and notary public in the State of Michigan, and by said commissioner and notary public all of said testimony was written out by typewriter machine as appears by foregoing record; that the foregoing record correctly shows the testimony as given by each and every witness and the whole of the proceedings had and taken before said commissioner and notary, Joseph W. Stockwell.

Second. The fact that said testimony was stenographically taken and then written out by typewriter, and the fact that the testimony of each witness was not written out from the shorthand notes in his (her) presence, and in his (her) presence read over to or by him (her) and then signed by him (her), is hereby expressly waived.

Third. That the foregoing depositions may be used for any purpose of this contest, subject to all objections and motions appearing on the foregoing record, with like effect and purposes, as if they and all things in relation to them fully complied with all the requirements of the Revised Statutes of the United States and the rules, printed or otherwise, of the Committee on Elections in the House of Representatives applicable thereto.

Fourth. That Joseph W. Stockwell, the officer before whom all depositions were taken in this contest, was before and during the taking thereof and now is a United States commissioner and notary public authorized to take depositions in civil actions by the laws of the United States and by the laws of the State of Michigan at the times and places the depositions herewith returned were taken, and that proof of the official character of such officer, Joseph W. Stockwell, is hereby waived.

Fifth. That all formalities and likewise irregularities, if any, in the notices for the taking of testimony and the service thereof and in bringing witnesses before the officer, Joseph W. Stockwell, who took the testimony in this contest, is hereby waived.

Sixth. That all, if any, irregularities in the manner of certifying to and returning the depositions taken in this contest to the Clerk of the House of Representatives of the United States are hereby waived.

Seventh. That each and every stipulation appearing upon the foregoing record shall be as binding and effective as if each such stipulation had been made in writing and signed by the papers to this contest or by their respective attorneys, but no objection appearing on the record is waived or lessened in effect by this stipulation.

Dated April 30, 1913.

E. C. SHIELDS,
JOHN W. ADAMS,
Attorneys for Contestant.
HORACE S. MAYNARD,
W. H. FRANKHAUSER,
GRANT FELLOWS,
Attorneys for Contestee.

To HORACE S. MAYNARD and W. H. FRANKHAUSER, attorneys for contestee and respondent :

Please take notice that on the 18th day of February, 1913, at the law office of Evelyn L. Sowers, in the city of Charlotte, county of Eaton and State of Michigan, at the hour of 10 o'clock in the forenoon of said day, testimony will be taken by and on behalf of the contestant in the above-entitled cause by deposition before Joseph W. Stockwell, United States commissioner in and for the western district of the State of Michigan and said third congressional district, of the following witnesses :

Samuel Robinson, E. G. Davids, F. M. Overmyer, F. B. Johnson, George Gardner, S. H. Sleater, R. L. Sowers, Jackson Mosier, Frank Ford, Louis J. Dann, Myron Hawkins, James Brown, Frank P. Towne, Walter Sutherland, Fred Milbourn, Charlotte; Sylvester Franks, John Palmer, William Witherall, Sunfield; E. A. Johnson, S. B. Eavans, Bellevue; Julius Ells, Cortez Cushing, Carmel Township.

Also please take notice that the taking of said testimony may be adjourned from day to day.

Dated February 13, 1913.

CLAUDE S. CARNEY, *Contestant.*
JOHN W. ADAMS, *Attorney for Contestant.*

STATE OF MICHIGAN, *County of Eaton, ss:*

Claude S. Carney, being personally sworn, says that on the 13th day of February, A. D. 1913, at the city of Charlotte, in the county of Eaton, and in the third congressional district of Michigan, he served a notice in writing, of which the within is an exact duplicate, upon Horace S. Maynard, an agent and attorney of the within-named John M. C. Smith, the contestee, by then and there delivering to the said Horace S. Maynard in person an exact duplicate of the within notice.

CHARLES S. CARNEY.

Subscribed and sworn to before me this 18th day of February, A. D. 1913.

JOS. W. STOCKWELL,
Notary Public, Kalamazoo County, Mich.

My commission expires July 8, 1913.

DEPOSITIONS OF WITNESSES.

Taken before Joseph W. Stockwell, United States commissioner, at the courthouse in the city of Charlotte, county of Eaton, State of Michigan, on behalf of the contestant, Claude S. Carney, on February 18 and 19, A. D. 1913, pursuant to the notice hereunto annexed.

Appearances: John W. Adams and E. C. Shields, for Claude S. Carney, contestant; Horace S. Maynard, W. H. Frankhauser, and Grant Fellows, for John M. C. Smith, contestee and respondent.

Mr. ADAMS. I suppose it may be stipulated on the record that we convened at the place mentioned in the notice and that we adjourned to the supervisors' room in the courthouse in the city of Charlotte, Eaton County, Mich., that being the most convenient place for the taking of the depositions.

Mr. MAYNARD. Yes.

Mr. ADAMS. We offer in evidence the proof of service of the taking of these depositions on this date as a part of the record.

SAMUEL ROBINSON, being by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Robinson, where do you reside?—A. Charlotte.

Q. What is your age?—A. I was 38 last October.

Q. How long have you lived at Charlotte?—A. All my life.

Q. Charlotte is in Eaton County in the third congressional district of Michigan?—A. Yes, sir.

Q. Were you in Charlotte on the 5th day of November, 1912?—A. Yes, sir.

Q. Were you in Charlotte on the 6th, 7th, 8th, and 9th of November, 1912?—A. Yes, sir.

Q. The general election, including the election of congressmen, was held in the county of Eaton on the 5th day of November, 1912, was it not?—A. Yes, sir.

Q. Did you take any part in that election?—A. I was secretary of the Democratic county committee.

Q. What ward of the city of Charlotte did you live in on the 5th day of November?—A. In the first ward.

Q. Where was the county clerk's office located in the county of Eaton on the 5th, 6th, 7th, 8th, and 9th of November, 1912?—A. In the northeast corner of the courthouse.

Q. The courthouse is located in the city of Charlotte?—A. Yes, sir.

Q. And was then?—A. Yes, sir.

Q. Did you visit the office of the county clerk of Eaton County at any time after the election within the next two or three days?—A. Yes, sir.

Q. When first, after the 5th day of November, as far as you can recollect, did you visit the county clerk's office in the courthouse of Eaton County?—A. Well, sir, I think it was the next morning—November 6.

Q. Whom did you find in the clerk's office at that time, if anybody?—A. Well, there were quite a number present—Mr. E. G. Pray, John C. Nichols, and John M. C. Smith.

Q. The Republican candidate for Congress on the Republican ticket?—A. Yes, sir.

Q. Who else?—A. I presume there were, perhaps, 15 or 20 there.

Q. What were they doing?—A. Why, they were going through the returns at that time, that is, what I mean, they were getting the returns from the different precincts throughout the county by phone, trying to get the returns in shape; that is, it had not been decided at that time; in fact, there were a number of precincts that had not been heard from.

Q. Did you at any time within two or three days, or four days, to make it broad enough, see any of the election returns from the various precincts or any of the precincts in the county of Eaton in the county clerk's office? I mean the written returns?—A. Yes, sir.

Q. When first did you see any of those of the election that was held on the 5th day of November, 1912?—A. Well, sir, I think either on the 7th or 8th, I am not certain it was the 8th, but I am positive it was on the 7th.

Q. What time on the day when you first saw those written returns did you see them—the first time after the election?—A. Along about, shortly before, or just about noon upon that day.

Q. Did anyone go to the clerk's office on that occasion with you?—A. Not at that time; no, sir.

Q. Who, if anybody, was in the clerk's office at that time?—A. There was no one present at that time in the clerk's office.

Q. Was there anybody in charge of the clerk's office, or claimed to be, at that time?—A. There was no one in the office at that time.

Q. Which door of the courthouse did you enter?—A. I entered the east door.

Q. Was there at that time a large corridor running east and west through the courthouse?—A. Yes, sir.

Q. With reference to the east door that you entered on that occasion, where was the door entering the county clerk's office located?—A. On the right-hand side.

Q. After you got in—I mean the east entrance of the courthouse—state whether you saw anybody in the corridor of the courthouse.—A. Yes, sir.

Q. Whom did you see?—A. I saw E. G. Pray; John Davis, of Battle Creek; William Smith, of Charlotte; and Lucille Smith, of Charlotte.

Q. Did you know William Smith, of Charlotte, at that time?—A. Yes, sir.

Q. Do you know what, if any, relationship that William Smith had to John M. C. Smith, the respondent in this proceeding?—A. He was a son.

Q. Did you notice whether any of those gentlemen you saw and lady at that time in the corridor of the courthouse had or were carrying anything?—A. Yes, sir.

Q. What?—A. They were carrying the returns.

Q. What returns?—A. The election returns of all the precincts but two.

Q. How do you know they were the election returns?—A. I afterwards went through them in the clerk's office.

Q. How soon after?—A. Within two or three minutes.

Q. Where did those four persons you have mentioned go from the corridor of the courthouse at that time?—A. They went into the clerk's office.

Q. Where did you go?—A. Into the clerk's office.

Q. How soon after they went in?—A. We were all together.

Q. Who was carrying the returns?—A. Mr. Pray had part of them, and Mr. Smith had part of them.

Q. William Smith?—A. Yes, sir.

Q. Where did they place those returns in the clerk's office, if they placed them anywhere?—A. On the counter.

Q. What did they do then?—A. Well, the three of them went away in a few minutes—Mr. Smith, Miss Smith, and Mr. Davis.

Q. Did Mr. Pray remain?—A. For a short time.

Q. When they laid those returns on that desk there, what did you do?—A. I asked Mr. Pray—told him I would like to go through the returns.

Q. What did he say?—A. He says, "It will not be necessary for you; we have just had them into the adding machine in the treasurer's office and had them tabulated, so you can get them absolutely correct from our figures."

Q. What further occurred between you and Pray at that time?—A. In a few minutes, or about that time—I am not just positive—perhaps it was before the other three had gone, Mr. Sutherland—W. H. Sutherland—and his son came in, and the three of us went through the returns together and added up the figures throughout the book. During that time Mr. Pray came to me and says, "Now, I am going to dinner and leave these books here with you, and when you get through you lock the door when you go out."

Q. Did you go through those returns at that time?—A. Yes, sir.

Q. Did you have to break any seals in order to get into the returns?—A. No, sir; the books were out of the envelopes.

Q. All of them out of the envelopes?—A. Yes, sir.

Q. Were the envelopes there?—A. I didn't see them.

Q. Did the returns that you saw there at that time purport to be the returns from some of the election precincts in the county of Eaton?—A. I think all of the precincts in the county of Eaton but Sunfield and Oneida.

Q. You did not find the returns of those two precincts in that lot of returns at that time?—A. No, sir.

Q. Did you on that occasion, before you left the clerk's office, see the envelopes with those returns?—A. No, sir; I think not.

Q. Did Mr. Pray or anyone else, at the time the four you have mentioned that you saw in the corridor, state to you or show you any figures of what they claimed the returns showed the result to be?—A. Yes, sir; Mr. Davis did.

Q. What Davis?—A. John Davis, of Battle Creek.

Q. Had you known John Davis, of Battle Creek, prior to that occasion?—A. Yes, sir.

Q. How long had you know him?—A. I presume for 20 years.

Q. He was living at that time in Battle Creek, as you understood it, was he?—A. Yes, sir.

Q. Had he lived in Eaton County, that you know of, at any time within 30 days prior to the election of November 5, 1912?—A. No, sir.

Q. How long, to your knowledge, had Davis been living at Battle Creek?—A. Well, for a number of years; I should say perhaps 10 or 12, perhaps longer.

Q. Do you know what he claimed his politics to be?—A. He claimed to be a Republican.

Q. Do you know whether he claimed to hold any position in the Republican Party?

MR. MAYNARD. I object to that as incompetent and immaterial and hearsay. (No answer.)

Q. Did Mr. Davis claim to you or did he to your knowledge hold any position in the Republican Party during the last 1912 fall campaign?

Mr. MAYNARD. The same objection.

A. No; he didn't claim he did.

Q. Do you know, of your own knowledge, what he was doing over here at that time that you say you saw him here at the courthouse?—A. He told me that he was here for the purpose of straightening up that Smith-Carney vote and getting the figures.

Q. When did he tell you that?—A. Shortly after noon.

Q. Of what day?—A. Of this same day.

Q. Do you say that on this occasion, when you first saw these books in the county clerk's office of Eaton County, that you did not see the envelopes or any of the envelopes, such as this one I show you, addressed to the county clerk, Charlotte, Eaton County, Mich. [showing witness Exhibit 2]?—A. I did not.

Mr. ADAMS. I don't offer it in evidence.

Mr. MAYNARD. The envelope shown witness purports to come from the township of Sunfield, Eaton County.

Q. On that occasion, when you were in the clerk's office, I understand that you did not find the election returns from the precinct of Sunfield?—A. No, sir.

Q. Do you say you did or did not?—A. I did not from Sunfield nor Oneida—I think the two townships were.

Mr. ADAMS. We offer Exhibit 3 for identification only.

Q. I show you and hand you Exhibit 3 for the purpose of identification only. With reference to that Exhibit 3, were the returns or papers which you say Mr. Davis and Mr. Smith and Miss Smith and Mr. Pray brought into the county clerk's office upon the day you mentioned—were of like character of this Exhibit 3, or not?—A. Yes, sir.

Q. That is, I mean as to the general make-up of the books?—A. Yes, sir; I think there was another book; I am not positive of that. I think there was a tally sheet in connection with these.

Mr. ADAMS. This is Exhibit 4 for identification, being the tally sheet from Sunfield.

Q. I show you a tally sheet marked "Exhibit 4." Did you see on the occasion referred to in the last question any tally sheets of the general character such as the one I am showing you now, Exhibit 4, on this particular occasion that you have been testifying about?—A. Yes, sir.

Q. Did you find a statement book or not find a statement book and a tally sheet from each of the several precincts in the county of Eaton on this occasion you have just mentioned save the townships of Sunfield and Oneida?—A. I don't remember of seeing the statement book; this is the book I went through at that time; the tally sheets or tally book.

Q. What do you mean by going through the tally book at that time? How many tally books?—A. I went through all of them except the two missing precincts.

Q. Those were Sunfield and Oneida?—A. To the best of my recollection those were the two townships that were missing.

Q. After you went through those, what did you do with them?—A. I left them there on the counter.

Q. Did you at any time on that day see any envelopes in the county clerk's office, such as Exhibit 2?—A. Yes, sir.

Q. When, first?—A. Shortly after dinner.

Q. Where were they?—A. The mail boy brought them in—brought the mail; the two townships came in shortly after dinner.

Q. What day was that?—A. The same day.

Q. Who was present when they were brought in, if anyone?—A. Well, I was there, John Davis was there, of Battle Creek, John C. Nichols, and this Lucille Smith.

Q. Is that Congressman Smith's daughter?—A. Yes, sir; and M. P. Hart, of the Republican office. I presume there were 15 or 20 there at that time.

Q. This John C. Nichols you have mentioned, had he, to your knowledge, ever held any official position in this county prior to the November, 1912, election?—A. Yes, sir; I know of his being justice of the peace of the city and circuit court commissioner.

Q. Did you ever see him working in the county clerk's office before that election day?—A. Prior to November 5?

Q. Yes, sir.—A. Yes, sir; I have seen him around the clerk's office considerably.

Q. Did you see him around the clerk's office after November 5, 1912?—A. Yes, sir; most every day.

Q. What was he doing there; what did you see him doing?—A. He seemed to be in charge of the affairs of the office to a considerable extent.

Q. These returns, you say, from those two precincts came in in the afternoon of that day on which you first examined the returns?—A. Yes, sir.

Mr. ADAMS. Exhibit 5 is from Oneida Township; for the purpose of identification I have had the envelope addressed "County clerk, Charlotte, county of Eaton," purporting to be the Oneida election returns from Oneida Township, marked "Exhibit 5."

Q. I show you now Exhibit 2 and Exhibit 5 and ask you whether those appear to be the envelopes you say came in on the afternoon of that day into the county clerk's office?—A. They appear to be.

Q. When those envelopes came into that office on that day from those two townships, state whether or not you noticed that they were or were not sealed.—A. They were sealed.

Q. Did you see anybody break the seals on them?—A. No; I didn't see that.

Q. What was done with them when they were brought in?—A. They were laid on the table in the center of the room.

Q. Did anybody open them in your presence?—A. I couldn't say that they were opened while I was in the room. John Davis, of Battle Creek, and I were checking over the figures we made, and while doing that these books were opened. I couldn't say who opened them.

Q. What books?—A. These envelopes were opened.

Q. From Oneida and Sunfield do you mean?—A. Yes, sir; if those are the two townships.

Q. Was Congressman Smith there at that time?—A. I don't think he was; no, sir.

Mr. ADAMS. Will it be conceded that E. G. Pray at that November 5, 1912, election, in the county of Eaton, was a candidate for representative in the State legislature on the Republican ticket?

Mr. FELLOWS. I understand he was; that is conceded upon the record. Why not have it conceded that before that he had been county clerk?

Mr. ADAMS. We will concede that he was county clerk; it may be conceded that the Mr. Pray referred to as being a candidate for the legislature on the Republican ticket at that election was during the year 1912, up to November 1, county clerk of the county of Eaton.

Mr. FELLOWS. Your concession being that he was county clerk up to the date at which he resigned?

Mr. ADAMS. I don't want to concede the resignation.

Mr. MAYNARD. All right; we will make the proof.

Mr. ADAMS. He may have been county clerk, but I don't concede the fact that he resigned.

Mr. MAYNARD. It is conceded that he was a candidate for representative at this election on the Republican ticket and was county clerk down to November 1, 1912.

Mr. ADAMS. We can look that up later; at this time I will stipulate that far. Do you concede that John C. Nichols, whom the witness has been testifying about, was a candidate at the November 5, 1912, election in the county of Eaton, Mich., for the office of circuit court commissioner on the Republican ticket?

Mr. MAYNARD. That is probably true; we will concede that.

Q. The John C. Nichols you saw over there in the clerk's office was the same John C. Nichols that was a candidate for circuit court commissioner, as you understand it, at the November 5, 1912, election?—A. Yes, sir.

Q. On the Republican ticket?—A. Yes, sir.

Q. What did you see William Smith, son of Congressman Smith, do there in the clerk's office at any time after this forenoon when you say you first saw these election returns in the county clerk's office of Eaton County?—A. I couldn't say that I saw him do anything particularly; he seemed to be checking up the figures; I am not positive he had a list with the figures himself.

Q. Did you see him handling any of these election returns or statement books there in the county clerk's office there at that time?—A. No, sir.

Q. I mean after you saw William Smith, John Davis, E. G. Pray, and Miss Smith bring them into the county clerk's office from the corridor of the courthouse?—A. No, sir; I never saw him after that time.

Cross-examination by Mr. MAYNARD:

Q. Mr. Robinson, what is your occupation?—A. At present I am working on the Charlotte Leader—a newspaper reporter.

Q. How long have you been engaged in reporting for the newspapers?—A. Why, for three or four years.

Q. What papers?—A. The Detroit News, the Grand Rapids Press and Herald, the Detroit Journal, and the Detroit Free Press.

Q. Have you also been engaged for the fireman's association in the State?—A. Yes, sir.

Q. As secretary of that organization?—A. No, sir.

Q. Have you ever been secretary of any of those companies of the local company; had anything to do with any of those associations in any official capacity?—A. I was statistician for the State Firemen's Association.

Q. You have been in politics a great many years here—one of the head ones?—A. I have been, from a Democratic standpoint.

Q. There is not much going on but what you are around to get the news for the papers?—A. No, sir.

Q. When you went over there in the morning, what did you go there for—to the county clerk's office?—A. Why, the returns in the Democratic headquarters were not complete; there was more or less controversy in regard to the returns.

Q. And you were trying to smooth it out and get the right figures?—A. Yes, sir.

Q. That is what you were aiming to do?—A. Yes, sir.

Q. You didn't find any of these written returns on the first day you went to the clerk's office?—A. I don't think so; I couldn't say that I did.

Q. You don't say but what some of them were there that day?—A. They may have been.

Q. As they came in, the earlier returns, you examined and consulted the tally sheets for the purpose of getting the correct returns, didn't you?—A. As they came in.

Q. Whenever they were called to your attention?—A. I didn't go there but that one time.

Q. That time you met them with the tally sheets coming from the treasurer's office, as you understand it?—A. Yes, sir.

Q. They had an adding machine in the treasurer's office?—A. Yes, sir.

Q. And the county officers, those interested in the county business, went to the county clerk's office to compute their adding with that machine?—A. That is as I understand it.

Q. Was the door in the treasurer's office right straight across from the door in the county clerk's office?—A. Yes, sir.

Q. When you say they had these tally sheets?—A. Yes, sir.

Q. You are positive they were the tally sheets?—A. Yes, sir; I am positive they were.

Q. You don't remember, then, of seeing the statement books?—A. No, sir; I don't; I hardly think they were the statement books.

Q. Because you found them to be the tally sheets?—A. Yes, sir.

Q. What officers were you computing those votes upon?—A. Both Congressman and the drain commissioner.

Q. Those were the two officers that you were especially interested in?—A. Yes, sir.

Q. And you tried to get the correct and exact figures upon Mr. Carney's vote, didn't you?—A. Yes, sir.

Q. As you understand it, your friend Davis was trying to get the exact figures for Mr. Smith?—A. So he stated to me.

Q. As far as you know that is all that either one of you were doing—was trying to get the exact vote?—A. Yes, sir.

Q. Of those two men?—A. Yes, sir.

Q. Neither of you were there changing any of those votes?—A. I didn't see anything of that kind; I didn't.

Q. You wanted to get the honest, straight vote?—A. That was my idea.

Q. And you two looked through the papers together?—A. No, sir; Mr. Davis and I didn't.

Q. Did you check over any with him?—A. Not until after dinner. My figures were 912 and his were 914; after he went through my figures he turned to Miss Smith and says, "I concede your figures are correct."

Q. What did that 912 represent?—A. That was the county vote.

Q. The majority of Smith over Carney?—A. Yes, sir. You see, those books—Sunfield and Onelda books, if those are the two—hadn't come in. We took our figures we got from the office for those.

Q. Up to that time you were close together on the count—912 majority for Smith, with the exception of two precincts?

Mr. ADAMS. That is calling for the conclusion of the witness.

Q. You were two apart; that is as near as you got until you got the figures?—A. Yes, sir.

Q. How old was William Smith; about 14 at that time?—A. Why, I don't know; I should say 14 or 15; well, I couldn't say.

Q. He is a boy, and you have known him—he has lived in the city ever since he was a boy?—A. Yes, sir.

Q. This was not the first general election you had been interested in and came to the county clerk's office for the purpose of seeing after the returns, was it?

Mr. ADAMS. I object to that as irrelevant and immaterial.

A. You mean by that, the State election?

Q. A general election.—A. I had been there before at the primary, at the clerk's office.

Q. You went usually, didn't you, for the purpose of trying to obtain the correct returns from the clerk's office?

Mr. ADAMS. I object to that as irrelevant and immaterial.

A. Yes, sir.

Q. That is the general practice in the county?

Mr. ADAMS. The same objection.

A. I couldn't say that is the general practice. I know any time I was there I was generally the only Democrat.

Q. You had the opportunity just the same as if you had been a Republican, didn't you, to ascertain what the returns were?

Mr. ADAMS. I object to that as incompetent and immaterial.

A. At the primary election I was unable to obtain anything in regard to the Democratic candidate's vote, but the Republican vote was all right.

Q. Was there any contest on the Democratic ticket?—A. I think not.

Q. You knew whoever was on there was elected, didn't you, as far as the primary was concerned?

Mr. ADAMS. I object to that as irrelevant and immaterial and calling for the conclusion of the witness.

A. I believe there was a contest at the primary.

Q. On which one?—A. I am not sure; I was greatly interested in getting the Democratic figures; there was a contest for probate judge; there was not between Congressmen.

Q. Were there a number of elections preceding this one that you had gone to the clerk's office for the purpose of obtaining the exact returns?

Mr. ADAMS. I object to that as irrelevant and immaterial.

A. Yes, sir.

Redirect examination by Mr. ADAMS:

Q. Do you hold or have you held any positions here in the fire department?—

A. Yes, sir; I have been an officer there for about 18 or 20 years.

Q. What office?—A. I was lieutenant for a number of years, and I am assistant chief at the present time.

Q. How long have you been assistant chief?—A. Practically under a year; since the 1st of last May.

Q. You said you thought the books that you examined relating to this November 5, 1912, election, the first time you examined them in the county clerk's office, were the tally sheets?—A. I think they were the tally sheets; yes, sir.

Q. Did you see there, or did you not see, the statement book on that occasion?—A. No, sir; I think I did not see the statement book on that occasion; I did later on.

Q. When, first, later on?—A. I think that afternoon the statement books were there.

Q. Counsel asked you whether you were trying to get the honest, straight vote. You were trying to find out what the returns showed, were you not?

Mr. MAYNARD. I object to that as leading. Let the witness state it instead of the attorney.

A. Yes, sir; I was there to get the figures from the books.

Q. Did you know whether it was the honest, straight vote or not that those returns showed on that occasion?—A. No, sir; I did not.

Q. Now, the 912 that you stated you figured that John M. C. Smith, candidate for Congress on the Republican ticket, had at that election was the plurality in the county of Eaton, and that you included, I believe, the Sunfield and Oneida township votes?—A. Yes, sir.

Q. Where did you get the Oneida and Sunfield township votes to include in reaching that result?—A. I took Mr. Pray's figures as he got them from the boards, as he told me.

Q. Had you or not, in determining 912 result, seen any tally sheets or statement books or returns from those two boards of election?—A. No, sir.

Q. Up to that time?—A. No, sir.

Q. Counsel asked you whether William Smith was not a little boy. Now, how old on November 5 would you say in your judgment William Smith, son of Congressman Smith, was?—A. I think he was about 15 years of age.

Q. A big boy, was he, at that time; how tall?

Mr. MAYNARD. I object to that as immaterial.

A. He was a good-sized boy in height, probably nearly as tall as I am.

Q. How tall are you?—Five feet four and one-half or five inches.

Q. Was not he taller at that time?—A. It might be; I am not sure about that.

Q. Did you notice—or state if you did notice, rather, just what you saw William Smith doing there in the clerk's office?—A. Why, I couldn't really say he was doing anything. He was interested in getting these figures. I think he had a little pad in his hand with figures on it. I am not really positive, but to the best of my recollection he did have a little pad of paper in his hand.

Q. Was that before or after you first saw William Smith in the corridor of the courthouse?—A. That was after.

Q. When after?—A. Well, right at the time; within a few minutes.

Q. Did you see him in there in the afternoon of that day again?—A. I couldn't say for sure whether I did or not; I think I did, but I wouldn't care to swear positively I did see him that afternoon.

Recross-examination by Mr. MAYNARD:

Q. Did he ask you what the figures were, and you gave them to him?—A. Did Smith?

Q. Yes, sir.—A. No, sir; I did not, I don't think. I know Davis did.

Q. That is, John Davis asked you what figures you got?—A. Yes, sir.

Q. And finally conceded that you were right?—A. Yes, sir.

Q. How many rooms are there in the clerk's office?—A. There were two rooms.

Q. Principal rooms?—A. Two large-size rooms.

Q. And a vault?—A. Yes, sir.

Q. Did you go into any except the front room?—A. I didn't go into the other rooms at all.

Q. You know how the second room is arranged?—A. Yes, sir.

Q. You have been in there?—A. Yes, sir.

Q. Do you know that they have tables and a desk in there upon which they could place any of these records?—A. Yes, sir.

Q. You didn't go in to see whether the envelopes were in there or not?—A. No, sir; I did not.

Q. Or whether the books were in there?—A. No, sir.

Q. All you can say about it is that you didn't notice anything at the time?—A. No, sir.

Q. You were not looking for anything else, were you, Mr. Robinson?—A. No, sir.

Redirect examination by Mr. ADAMS:

Q. How many different people did you see examining these election returns and tally sheets and statement books after the November 5, 1912, election in the county clerk's office?—A. Well, sir, they were open for inspection; anyone who cared to do so had a right to go ahead and examine those books.

Q. They were open to the public and anybody that came in could look at them, is that right?—A. Yes, sir.

JACKSON MOSIER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Mosier, you live in Charlotte, Eaton County, Mich.?—A. Yes, sir.

Q. Your age is what?—A. I am past 68.

Q. You have lived here how long?—A. About, since 1869; 44 years, nearly.

Q. You live in what ward here?—A. In the third ward.

Mr. ADAMS. By the way, will you concede that at the November 5, 1912, election that there were four wards in the city of Charlotte and separate voting precincts, namely, the first, second, third, and fourth wards?

Mr. MAYNARD. Yes, sir.

Q. Were you a voter in the third ward at the November 5, 1912, election?—A. Yes, sir.

Q. Did you have any position in the voting place in the third ward at that election?—A. I was appointed to challenge by the chairman of the Democratic city committee.

Q. Did you go there as such challenger?—A. Yes, sir.

Q. What time on that day did you reach that voting place and begin your duties as challenger for the Democratic Party?—A. I think it must have been 7, or somewhere about 7, o'clock or a little after.

Q. Was there or not any challenger there that day for any of the other political parties?—A. There was one appointed, but I don't think I saw him in there all day, except in the morning, until after the polls were closed.

Q. Who began acting as inspectors there in that precinct on that day?—A. Mr. Dunning and J. B. Dowigan.

Q. Was there not another inspector?

Mr. MAYNARD. The charter provides for two.

Q. As a matter of fact there were three inspectors of election on that day?—A. I think Mr. Sawyer was in there, for what purpose I don't know.

Q. Was there a man named Barney?—A. He took the ballots and deposited them in the box.

Q. What was his given name?—A. George.

Q. Do you say there was any other man who acted as inspector in that precinct on that day in addition to those you have named?—A. No, sir; I guess he didn't act as inspector, Mr. Adams.

Q. What was he doing there?—A. He only had the poll lists; canvassed the city. Had list of the voters in the city and checked them off.

Q. He was in there, was he?—A. Yes, sir.

Q. Within the railing?—A. Yes, sir.

Q. Around where the inspectors were?—A. Yes, sir.

Q. How long was he in there that day?—A. All day.

Q. What did you see him doing?—A. I didn't see him doing anything, except taking care of his books and checking off those who came in.

Q. Do you know what he was doing that for?—A. To get out all the votes, I suppose, in the ward; we usually made a canvass.

Q. Did you hear any oath administered to him in that precinct on that day by anybody?—A. I did not; no, sir.

Q. But he was around there where the ballots were being handed out and where people were voting?—A. Yes, sir; he was inside—the same as this is the inside of the railing; same as I was.

Q. Did you give us his given name?—A. I think William; I don't know.

Q. You may state whether any of the men who came into that precinct on that day while you were there asked for instructions?—A. They did.

Q. And for a ballot?—A. Yes, sir; they asked for instructions.

Q. Did any of the inspectors of election administer any oaths to these men who applied for instructions on that day?—A. Not to my knowledge; I didn't hear them.

Q. When any request was made by any voter to go in there to vote on that day and to be instructed in the manner of voting his ballot, what was done in the way of giving him instructions? Explain that.—A. He went in the booth to get instructions, what they wanted to know.

Q. Who went in?—A. I went in and two others, usually Dowigan and Dunning.

Q. Did you always go in in every instance when a voter on that day asked for instructions?—A. I did when I was there.

Q. Were you not there the whole day?—A. I was not there when I went to dinner; I left there to go to my dinner.

Q. You left during the noon hour to get your dinner?—A. Yes, sir.

Q. How long were you away from that voting place on that day for your dinner?—A. I don't think I was gone over three-quarters of an hour.

Q. Did anyone take your place as challenger during that time on behalf of the Democratic Party?—A. I didn't see anybody; no one was in there when I came back in my place.

Q. The polls opened at what hour in the morning?—A. I think at 7 o'clock, if I am not mistaken.

Q. In the evening at what hour did they close?—A. At 5 o'clock.

Q. After you returned from your noon meal to that voting place, state whether you did or did not remain there performing your duties as challenger, as you have mentioned, up to the time the polls closed?—A. I did.

Q. When you were there on that day in that place state whether you did or did not in every instance when you noticed anybody applying for instructions as to the manner of voting, go into the booth and see the ballot marked.—A. I went in the booth.

Q. Did you see the ballots marked?—A. I couldn't say that I did.

Q. Why not?—A. It was usually too full; I couldn't hardly get in. When four got in there it was pretty hard to get in.

Q. Did you hear—were you in a position to hear—what was said to the voter?—A. Yes, sir; I was in a position to hear.

Q. Now, you say, do you, that in no instance when voters on that day there asked for instructions as to the manner of voting was there an oath first administered to the voter before the instructions were given to him?—A. Do you mean those who asked for assistance?

Q. Yes, sir.—A. Not that I know of.

Q. You didn't hear any oath administered to any of them?—A. I being on the other side, the ballot was handed through this side; however, none could pass out this way; I could see anyhow, being on the other side of the booth, maybe the length of the room.

Q. Where were the inspectors with reference to where you stood when performing their ordinary duties of handing out and receiving ballots?—A. The handing out was on this side of the booth, and the clerks were also on this side, and I was on the opposite side.

Q. In what position were you to challenge the voter you desired to challenge?—A. I would go in from this side; perhaps two of us would go in from this side and one from that side, and the one who handed out the ballot would go in.

Q. Did you hear any oath administered that day to any voter who applied for instructions as to whether he could read the English language?—A. No, sir.

Q. Did you hear any oath taken by any voter or voters who applied for instructions that they were physically disabled to mark their ballot?—A. I did not.

Q. Or on any occasion when a voter in that precinct on that day applied for instructions as to the manner of voting his ballot, did more than one inspector go into the booth?—A. More than one inspector?

Q. Yes, sir.—A. Three every time.

Q. I mean the inspectors now?—A. The inspectors?

Q. Yes, sir.—A. I don't know as I get that question.

Q. Whether more than one of the inspectors in any one instance went in when a voter had applied for instructions as to the manner of voting his ballot?—A. Yes, sir.

Q. You say they did; sometimes two of them went in?—A. Two every time.

Q. Two inspectors?—A. Yes, sir.

Q. Did you hear any suggestions made there that day to any voters who applied for instructions in marking their ballots, made as to who the voters would vote for?—A. I did.

Q. What did you hear?—A. I heard Mr. Smith's name mentioned.

Q. Who mentioned it?—A. Mr. Dunning.

Q. When he was in the booth?—A. Yes, sir.

Q. With the voters?—A. Yes, sir.

Q. A suggestion was made by Mr. Dunning, who was then inspector of election, to the voter to vote for John M. C. Smith; is that correct?—A. That is correct.

Q. Was that the John M. C. Smith who was then a candidate on the Republican ticket for Representative in Congress?—A. Yes, sir.

Q. Did you hear any suggestion made there to any voters who applied for instructions on that day for any other candidate?—A. I did not myself.

Q. Did any controversy occur there between you as challenger for the Democratic Party that day with reference to the manner in which the inspectors were carrying on that business?—A. We had some trouble there.

Q. What controversy did you have?—A. I didn't think it was right.

Q. What did you say?—A. I said it should be stopped.

Q. What had to be stopped?—A. Soliciting.

Q. Soliciting what?—A. Votes.

Q. Who did you have that controversy with?—A. Mr. Dunning.

Q. What did he say?—A. He said, "What are you going to do about it?"

Q. Do you know what Mr. Dunning's politics were on that day?—A. He was a Republican.

Q. Could you see how those men who were instructed by the inspector or to whom suggestions were made that they vote for John M. C. Smith for Congressman in those booths on that day voted?—A. No, sir; I could not.

Q. What business are you engaged in?—A. I don't know hardly.

Q. Are you retired?—A. Yes, sir; tired.

Q. What did you say retired or tired?—A. Tired.

Cross-examination by Mr. MAYNARD:

Q. Mr. Mosler, which way did the booths run?—A. They run north and south.

Q. Four booths in a line?—A. Yes, sir; all in line.

Q. On which side of the booths were you sitting?—A. On the west side.

Q. The west side of these booths that run north and south?—A. Yes, sir.

Q. At the south end of the booths were you, next to the railing, the southwest corner of those booths?—A. I was all around them, every side.

Q. You traveled around the booths?—A. Yes, sir.

Q. The man who gave out the ballots was sitting at the railing at the south end of the room?—A. Yes, sir; on the east side.

Q. And the clerks were on the east side of the booth?—A. Yes, sir.

Q. And the inspectors of election were on the east side of the booth, or one on the west side?—A. One on the west side.

Q. The ballot box was on the left side?—A. Yes, sir.

Q. The voters received their ballots in the southeast corner of the room, didn't they, through the gate?—A. The southeast corner; yes, sir.

Q. They entered the booths from the east side?—A. Yes, sir.

Q. And passed through and cast their ballots on the west corner?—A. In the northwest corner; yes, sir.

Q. And you were on the side where they came through?—A. Yes, sir.

Q. Was there any man who asked for assistance that went into the booths that you didn't go in with him?—A. I don't hardly think so while I was there.

Q. How many were there?—A. All told?

Q. Yes, sir.—A. Well, I would say a very small percentage of the voters who asked for assistance in the first place.

Q. One or two?—A. More than that.

Q. About how many?—A. I should say now about seven or eight, perhaps.

Q. In the whole?—A. Yes, sir.

Q. You are not positive about that, are you?—A. Well, I couldn't say positively.

Q. Can you give any names?—A. No, sir; I can't give the names.

Q. Who was the one that you said you had trouble over?—A. I couldn't tell you what his name was.

Q. You don't know what his name was?—A. No, sir; I couldn't say what his name was.

Q. Mr. Mosler, you didn't see anybody mark a ballot for a voter, did you?—A. No, sir; I couldn't say that I did.

Q. Now, Mr. Mosler, did you hear either one of those inspectors ask any voter to vote for John M. C. Smith, in that language?—A. I did; one.

Q. Who was that?—A. Mr. Dunning.

Q. Do you remember the man's name?—A. No, sir; I do not.

Q. Can you give the language he used to this man?—A. He says, "J. M. C."; that is all.

Q. He just mentioned the name?—A. Yes, sir.

Q. Was this about the language he used, "How about John M. C. Smith?"—A. Yes, sir; something like that.

Q. That is all he said?—A. Yes, sir.

Q. That is the thing you took offense at?—A. I didn't think it was right.

Q. That man was the one that caused the trouble when he said, "How about John M. C. Smith?"—A. That is the time I got a little mad.

Q. Do you remember that man's name?—A. No, sir; I can not think of his name.

Q. Do you remember the time that occurred, was it before you went to dinner or after?—A. That was after dinner.

Redirect examination by Mr. ADAMS:

Q. You say, Mr. Mosler, that you heard one; what do you mean by that—one who?—A. I don't remember of saying that; I meant one of the inspectors.

Q. Did you hear any suggestion made to any of these others who applied for instructions that day?—A. The same thing.

Q. How many different times did you hear these suggestions given to voters?—A. I couldn't tell you how many there were that asked for assistance, I couldn't give you the number.

Q. State whether or not suggestions were made to all when you were present that day?—A. Do you mean those who asked for assistance?

Q. Yes, sir.—A. All those, I think; yes, sir.

Q. Did you know those men who were applying for instructions?—A. No, sir; I didn't pay any attention to who they were. There are a good many in the ward I don't know.

Q. Whether you knew them by name—those who applied for instructions?—A. No, sir.

Q. On that day?—A. No, sir; I couldn't tell you that.

Q. Did you or not know their names on that day when they voted?—A. No; I don't think I did.

Q. Who handed out the ballots to the voters that day?—A. Mr. Dowdigan.

Q. Who received the ballots from the voters and put them in the ballot boxes?—A. George Barney.

Q. Who acted or assisted there in the actual work of counting the ballots, if you know? In other words, did anyone assist in doing that except those who were inspectors and the clerks in that precinct?—A. No; I think not.

Q. Were all the inspectors there or not when the counting was done, while you were there?—A. I think so; I think they were all there.

Q. How many ballot boxes did they have there that day, more than one or only one?—A. Just one.

Q. Did the board stay there after the adjournment in the afternoon until the counting up was concluded, so far as you know?—A. Yes, sir; they did.

Q. Was John C. Nichols there any part of the day?—A. Inside?

Q. Yes, sir.—A. No, sir; I think not.

Q. You intimated a little earlier in your examination, Mr. Mosler, that you thought somebody else had acted there as inspector?—A. No; he did not; he didn't act as inspector.

Q. That was the man you referred to?—A. Yes, sir; he didn't act as inspector.

Recross-examination by Mr. MAYNARD:

Q. Mr. Mosler, this man you referred to was J. W. Sawyer, of the gaslight office?—A. Yes, sir.

Q. He was the Republican challenger and had his book there, keeping tally?—A. He kept tally; yes, sir.

Q. That is all he did?—A. He didn't act as challenger; I presume that is what he was there for.

Q. What you mean is he didn't go into the booth?—A. No, sir.

Q. He was appointed by the Republicans for that purpose?—A. I suppose that is what he was there for.

Q. That is what he did—checked off the voters that went in?—A. Yes, sir.

Q. Mr. Sawyer is a very quiet man?—A. Yes, sir.

Q. He didn't have much to say; only just kept the tally?—A. No, sir.

Q. You and Mr. Sawyer were the only ones who were operating in that way—you for the Democratic Party kept the checking—A. I didn't have any time.

Q. You were simply looking to see that those who went in the booths voted right?—A. Yes, sir.

Q. There was just one thing I didn't get. You said that somebody asked for instructions; did you hear anybody there ask anybody to mark a ballot for them?—A. I did not.

Q. They simply wanted to know how to mark it themselves?—A. Yes, sir.

Q. And those instructions were given to them and they marked their own ballots?—A. As far as I know; yes, sir.

Redirect examination by Mr. ADAMS:

Q. Did you see whether they marked their own ballots or not?—A. No, sir; I did not; I couldn't tell you in regard to that.

Q. You say, Mr. Mosier, as I understand it, that you didn't see whether the voters who applied for instructions actually marked their ballots themselves or whether they didn't; is that correct?—A. I think that is correct.

Q. Why was that? Why couldn't you see? What was the reason of it; was there any reason?—A. Most of the time you could hardly get in; you get four in there and the room is small.

Q. There would be the voter and two inspectors?—A. Yes, sir; and when I would get in that would make four in the booth.

Q. The booths were about how long—the longest way of them—as a man walked in?—A. I don't know what size they were.

Q. Just wide enough for one man to get in—in width?—A. There is not much room in them, I am sure.

Q. Four feet, maybe, walking space in there?—A. I think so.

Q. The voter would get in and the two inspectors, and there was not much chance for you to get in; was that or not the reason why you couldn't see whether the voters voted their tickets when they asked instructions or not?—A. That is true.

Recross-examination by Mr. MAYNARD:

Q. Mr. Mosier, on one side of this booth was the door by which they entered?—A. Yes, sir.

Q. On the other side, where you were, was the door they came out through when they voted?—A. Yes, sir.

Q. When the voter went in the shelf on which the tickets lay was up one side of the booth?—A. I think about in the center.

Q. It went clear across the booth—the shelf did?—A. Yes, sir.

Q. As the voter went in you stood at his hand, didn't you; next to him on that side of the booth?—A. Yes, sir.

Q. The others came on the other side, did they; that is, the inspectors in the same direction the voter did?—A. On each side; yes, sir.

Q. When the voter received the instructions he retired and closed the door and marked the ballot himself, didn't he? You didn't see any inspector mark a ballot at any time?—A. I couldn't say that I did.

Redirect examination by Mr. ADAMS:

Q. As I understand you, when a voter was in there receiving instructions one inspector was on one side of the voter and another inspector was on the other side?—A. Yes, sir.

Q. So you challengers had to take your chances whenever you could get a chance?—A. I got in somewhere.

(Whereupon the hearing was adjourned until 1 o'clock p. m.)

Mr. JACKSON MOSIER, recalled, testified further on behalf of the contestant as follows:

Examined by Mr. ADAMS:

Q. So far as relates to the voters in the third precinct at the November 5, 1912, election, who applied for instructions in marking their ballots; did you notice whether any of those particular voters had any physical disability?—A. I did not.

Q. Did they have any physical disability so far as you could observe?—A. No, sir.

Q. Did they make any claim there in your hearing—those particular voters, I mean—that they had any physical disability which prevented them from marking their ballots?—A. Not that I noticed.

Recross-examination by Mr. MAYNARD:

Q. What they desired was instructions as to how to mark it themselves?—A. They wanted instructions.

Q. As to how to mark the ballot?—A. Yes, sir; and some couldn't find the party ticket; they didn't know their party ticket.

F. M. OVERMYER being by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Overmyer, you live where?—A. I live in the second ward of this city.

Q. How long have you lived in that ward?—A. About 16 years.

Q. By "this city," what city do you mean?—A. I mean the city of Charlotte, Mich.

Q. Eaton County?—A. Yes, sir.

Q. How old are you?—A. I was 68 years old the day before yesterday.

Q. Were you a voter in the city of Charlotte at the last November 5, 1912, election?—A. Yes, sir; I was.

Q. What ward did you live in at that time and vote in?—A. I was in the second ward.

Q. Were you in any way engaged in the election aside from voting in any part of this city on that day?—A. I was acting in the capacity of challenger.

Q. For what party?—A. For the Democratic Party.

Q. In what ward?—A. In the second ward.

Q. Was there more than one voting place in that ward at that election, one voting precinct?—A. As I understood it, yes, sir; that is all I know of.

Q. What time in the morning did you undertake the performance of your duty as a challenger for the Democratic Party in that voting precinct?—A. I was there when the polls opened.

Q. About what time did they open?—A. Really, I couldn't tell you exactly.

Q. Approximately?—A. Along about half past 6, I think, or possibly earlier than that.

Q. What time did they begin voting in that precinct on that day, if you remember?—A. Along, I should say, about half past 6; might have been later.

Q. How long did you, from the time they did open up and begin to work on that board, remain there that day?—A. I was there all day until the polls were closed and the vote counted at night.

Q. Did you leave at any time during the day?—A. I left at one time about 5 minutes to get a cigar. I don't think I was absent from the building or voting place any more than 5 or 10 minutes at the outside from the time the polls opened until they closed at night and the vote was counted.

Q. How did you get your meals?—A. My dinner was sent to me by some one; I didn't inquire by whom—I was satisfied with it.

Q. Did you or did you not perform the duty of challenger at that precinct that day?—A. I did to a certain extent; yes, sir.

Q. Who acted as inspectors of election at that precinct that day?—A. I think Claude Knowles, Herman Gouldie, and Roy Preston.

Q. Did Mr. Barber act as inspector of election that day?—A. Yes, sir; he prepared the tickets and the ballots.

Q. Who were the clerks, if you remember?—A. Mr. Gouldie and Mr. Preston.

Q. R. S. Preston?—A. Roy Preston and Herman Gouldie.

Q. Were there any changes made in the inspectors in that precinct that day that you know of? While there were three different ones receiving ballots and depositing them in the box from the time they started in in the morning, whether inspectors or not, until they closed the polls that night and got through with the counting of the votes, whenever that was, did you notice whether any change was made in any of the inspectors at that precinct—any others who acted as inspectors—or did the same three men act from the beginning to the end?—A. Well, now, of course, I know who started in and who succeeded that person, if that is what you wish to find out, that received the ballots. I don't think there was any change made in this; that is, in regard to Mr. Preston and Mr. Gouldie and Mr. Knowles—there was in those that received the ballots on the opposite side of the booth—and deposited them in the box.

Q. Did some one of those three men perform those duties or did some new man come in?—A. I never saw any but those three; that is all I noticed.

Q. Who had charge of the ballot box?—A. It started in with Mr. Hamilton, as I know his name.

Q. What was he doing at that election that day?—A. He was, I think, one of the board of aldermen here. I presume——

Q. (Interruptin.) Not what you presume. What did you see Mr. Hamilton doing there that day?—A. I saw him depositing ballots in the box as they were passed to him before they came out of the booth.

Q. As the voter came out of the booth he handed his ballot to Mr. Hamilton?—A. Yes, sir.

Q. And you say that Mr. Hamilton put that ballot into the ballot box?—A. Yes, sir.

Q. How long that day did he act in doing that?—A. I don't think Mr. Hamilton was there over an hour or so.

Q. Who took his place then in receiving and depositing the ballots in the ballot box in that precinct?—A. Mr. Barber.

Q. Did any others besides Mr. Barber and Mr. Hamilton, on that day, receive ballots from the voters and deposit them in the ballot box?—A. Yes, sir; there was another.

Q. Who?—A. John C. Nichols.

Q. Is that the John C. Nichols who afterwards assumed to be and acted here in the capacity of county clerk?—A. The same man; yes, sir.

Q. Was he or not the same John C. Nichols who was a candidate on the Republican ticket at that election for circuit-court commissioner?—A. Yes, sir.

Q. The same man?—A. The same man.

Q. What did you see John C. Nichols do there in that voting place on that day?—A. I saw him take quite a number of ballots as they were passed to him and announce the name of the voter and deposit the ballots in the box.

Q. In the ballot box?—A. Yes, sir.

Q. How long, Mr. Overmyer, did you see John C. Nichols act in that capacity of receiving and depositing those ballots there?—A. Well, as near as I can recollect now, I should say he was there from an hour to an hour and a half. I might be a little off in that, but that is my best recollection at this time.

Q. Had John C. Nichols been around that voting place any before he began receiving and depositing ballots on that day?—A. Yes, sir; I noticed him around there.

Q. On the inside?—A. If he was inside he was on the opposite side from where I usually stood; if he was in there before that time, I didn't know it.

Q. What was the first you saw John C. Nichols doing in that voting place that day?—A. Receiving those ballots; that was the first I noticed him having anything to do with it.

Q. Had any of the other inspectors who began acting on the morning of election day there left the second ward voting place at the time that John C. Nichols began acting in the capacity of receiving and depositing those ballots?—A. I couldn't answer that question.

Q. Did you hear any oath administered to the John C. Nichols you have referred to before he began to receive and deposit those ballots on that day?—A. I did not; no, sir.

Q. What, if anything, did you notice John C. Nichols doing there in that voting place on that day after he ceased receiving and depositing ballots?—A. He was there in the evening when the vote was being counted.

Q. What did you see him doing there in the evening?—A. Well, he stood there and had a little something to say occasionally.

Q. What did he have to say? What did he say?—A. Well, now, sir, I can not repeat anything he said. Of course, I know that he dictated to Mr. Knowles as he was counting the ballots several times. I remember on one occasion Mr. Knowles says, "Now, here, that shows to me the intent of the voter all right enough," and Mr. Nichols made the remark, "I don't see how any man can say how he knows what the intent of the voter was," or something to that effect. Now, the point at issue I don't know what it was or who the candidate was that brought the argument about.

Q. Did you notice in that precinct in the second ward on that day whether any voters made any requests to the election board for instructions as to the manner of voting their ticket?—A. One came under my notice particularly, being a neighbor of mine. I know he made a request; what others did that were in there for instructions—what requests they made—I don't know. There were quite a number in there, and they seemed to want assistance in marking their ballots or something of the kind.

Q. Was there any instance where a voter on that day in that precinct made a request for instructions in the marking of their respective ballots before voting them, did you hear any oath administered by any of the inspectors of that election on that day to those men who applied for instructions?—A. I did not.

Q. Did you hear any of those men on that day there who made application for instructions in the manner of voting make any statement to any of the election board that they did not understand the English language?—A. No, sir; I didn't hear anything of that kind.

Q. Did you hear any of those on that day there who applied for instructions in reference to voting their ballots make any claim that they were physically disabled and could not for that reason vote their ballots?—A. Yes, sir; one voter there claimed defective eyesight; he was an elderly gentleman and quite feeble.

Q. Do you know his name?—A. I do.

Q. What was his name?—A. Stephen Ferguson, known as Elder Ferguson.

Q. Did he vote at that election?—A. Yes, sir.

Q. Do you know whether he personally marked his ballot or not?—A. I know he did not.

Q. Who marked his ballot?—A. Claude Knowles.

Q. With the exception of this gentleman you have just mentioned, did any of those applying there for instructions in the matter of voting their ballots or to mark them make any statement to any of the inspectors there that they were physically disabled and could not for that reason mark their ballots?—A. Just allow me to make a little statement. This Elder Ferguson is the only man I saw in the booth there. I didn't understand the duty or how far a challenger's authority extended, and I didn't find it out until later; consequently I was not in the booth but with that one man, Elder Ferguson.

Q. How close were you to the space where the voters were handed their ballots before they went into the booths to mark them?—A. I think about 8 or 10 feet.

Q. Did you hear any of those voters who came in there applying for a ticket to vote in the precinct that day before they got their ballot or ticket and before they went into the booth make any statement to any inspector of the election that they were physically disabled and for that reason could not mark their ballots and wanted instructions, or that in substance, except this one you have mentioned?—A. I did not hear any others except the one.

Q. Did you hear any of those men who applied there on that day for instructions with reference to the voting of their ballots make any statement to any inspector of that election board that they did not understand the English language and could not read it?—A. I didn't hear anything of the kind.

Q. Were you in the booth or did you watch any of those men, except the one you have mentioned, receiving instructions, of those who applied for instructions?—No, sir.

Q. That is the only one?—A. Yes, sir.

Q. That you saw in the booth?—A. Yes, sir.

Q. Were you in a position to see? How close were you to him?—A. I went in the booth with him.

Q. Who else went in?—A. Mr. Knowles was in there.

Q. Anyone else?—A. No one but the voter.

Q. Who went in with those who had applied for instructions?—A. Mr. Gouldie went in.

Q. He was a clerk?—A. Yes, sir.

Q. Did the inspectors go in with Mr. Gouldie?—A. No; no one did any time I was there during that day. I never saw more than one person in with the voter in any of the booths.

Q. What different men besides Mr. Gouldie went in with those who applied for instructions?—A. Mr. Knowles went in.

Q. Anybody with him?—A. No one but the voter.

Q. Mr. Knowles was, as you understood it, a Republican?—A. Yes, sir; I always understood he was a Republican.

Q. Did this man John C. Nichols assist any in helping the voters in reference to marking their ballots in the booths?—A. Not that I know of.

Q. You didn't notice that?—A. No, sir.

Q. With this one exception that you have mentioned of this elderly gentleman—Mr. Ferguson—only one inspector went in with the voters who applied for instructions?—A. That is all I saw at that time.

Q. No challengers went in except in that one instance that you noticed?—A. No, sir.

Q. Were you asked at any time to go into the booth when instructions were given to voters?—A. No, sir.

Q. Did you hear the inspectors ask any of the challengers, if any others were there, to go in when these instructions were given to those voters?—A. No, sir; I didn't hear them ask anyone to go in.

Q. Were you or not around there that day within the voting place within hearing distance if a conversation took place there in an ordinary tone?—A. Yes, sir; I was in a position to hear it, I think, about all the time.

Q. Did I understand you to say that John C. Nichols was the only one who acted as inspector besides Mr. Hamilton and these other fellows, Mr. Barber and Knowles, Hamilton, Barber, and Nichols, and Knowles, too?—A. Yes, sir.

Q. Were there any others who assumed to act as inspectors of election that day besides those?—A. Not that I know of.

Q. When John C. Nichols was receiving those ballots and depositing them, where was he standing or sitting, as the case may have been; or located, in that voting place with reference to where the other inspectors of that election were who were then acting there?—A. On the opposite side of the booth.

Q. Could the other inspectors see what John C. Nichols was doing when Nichols was depositing and receiving those ballots?—A. No, sir.

Q. What was there to prevent the other inspectors from seeing what Nichols was doing there when receiving and depositing those ballots?—A. They were on the opposite side of the booth.

Q. How high were those booths, approximately?—A. I should say they were in the neighborhood of 7 feet; possibly more than that.

Q. How many were there of those booths?—A. Four, if I recollect right.

Q. Were they attached together consecutively one after another?—A. Yes, sir.

Q. As they were attached together they constituted a row of booths aggregating how many feet would you say in length?—A. I should say about 12 feet.

Q. As I understand, when John C. Nichols was receiving and depositing those ballots from the voters, that he was alone where he was doing that work, and the other inspectors of election were on the other side of those booths?—A. Yes, sir.

Q. Did he remain there during the counting of the ballots?—A. Yes, sir.

Q. Until the count was completed or not?—A. The count was completed.

Q. Was E. G. Pray there that night while the counting was going on?—A. A very short time.

Q. Have you any personal knowledge of what disposition was made of the ballot boxes in that second ward precinct that night?—A. No, sir; I know nothing of what was done with them.

Q. Well, do you know what became of the ballots that were counted there in that precinct?

Mr. MAYNARD. I will interpose an objection to that; there is nothing in the contest warranting any inquiry along this line, so I will object to it as incompetent and immaterial.

Mr. ADAMS. We may want to make an amendment.

Mr. FELLOWS. Then the amendment should be made now.

Mr. ADAMS. If we make any application for an amendment we will put it in before you take your testimony.

Q. Do you know what became of the ballots that were counted there in that precinct that night?—A. I saw Mr. Pray take a number of the bundles as they were rolled up; he had them under his arm.

Q. Was that E. G. Pray?—A. Yes, sir.

Q. Was he or not the same Pray who was a candidate on the Republican ticket for a member of the Legislature of the State of Michigan at that election?—A. He was the same man; yes, sir.

Q. Do you know what he did with them?—A. No; I do not.

Q. Where did he take them? Where did you see him go when he had them?—A. I don't think I saw him leave the booth; I think as soon as the ballots were counted I came out; and, if I recollect right, Mr. Pray was there yet when I left.

Q. Was Mr. Pray to your knowledge—or personal knowledge—sworn in as a member of the board that day, or a clerk of the election, or as any officer that had anything to do with the election or counting the ballots? Did you hear him sworn in?—A. I did not; no, sir.

Q. Where did Mr. Pray live—what ward—on the 5th day of November last?—A. I don't know as I can answer that question.

Cross-examination by Mr. MAYNARD:

Q. You don't know whether they were used or unused ballots, do you?—A. I don't just understand the question.

Q. I mean whether you could tell—whether you know for certain—whether those ballots that you claimed you saw under his arms were those that had been voted or was unused ballots?—A. I couldn't say for that.

Q. You didn't notice what it was he had under his arm?—A. I know they were rolled right up and strings tied around them; that is about all I know about it. I know, altogether, that he had several rolls in his hands.

Q. After they were counted?—A. Yes, sir.

Q. Now, these booths were canvas booths?—A. Yes, sir.

Q. How many did you have there in the ward?—A. Four, I think.

Q. Where was this election held?—A. It was held in the basement of the courthouse.

Q. In the basement?—A. Yes, sir.

Q. It was a very small place, was it not?—A. It was not very large.

Q. These booths were portable booths, made to put together?—A. Yes, sir.

Q. Made out of canvas?—A. Yes, sir.

Q. So that you could hear everything that was said all around that booth?—A. Yes, sir.

Q. In the lobby was a low ceiling?—A. Quite low, I think.

Q. And these booths were put in the west end of the lobby?—A. Yes, sir.

Q. For the railing you had ropes surrounding the booth or voting place?—A. Yes, sir.

Q. Was there one of the lobbies, or one of the alleys, on the west side of this booth?—A. Yes, sir; there was a space between the end of the booth and the west wall of the room.

Q. And an alley going around on the north side?—A. Yes, sir.

Q. That went to the urinal or water-closet north of the booth?—A. Yes, sir.

Q. And a door opened there?—A. I think so; yes, sir.

Q. And an alley or hall leading from that lobby, to the west, to the offices of the drain commissioner?—A. Yes, sir.

Q. On the other side of the booth a hall running to the office of the school commissioner?—A. Yes, sir.

Q. So that this lobby was a sort of a public place, with doors opening there all around?—A. Yes, sir.

Q. During the time you were there, was it true that this booth or voting place was surrounded by the general public during all the time—men standing around?—A. Quite a good many; yes, sir; at different times.

Q. About what time was it you saw John C. Nichols taking the ballots and putting them into the ballot box?—A. That was along about the noon hour if I recollect right.

Q. You are not exact about the time, are you?—A. No.

Q. You don't even know to an hour of the time the polls opened, do you?—A. I wouldn't want to say.

Q. How did you happen to see John C. Nichols putting those ballots in the box?—A. Well, sir, I happened to have a seat right near him.

Q. You had a seat right near him?—A. Yes, sir.

Q. On the north side of the booth?—A. Yes, sir.

Q. You saw him when he took the ballots?—A. Yes, sir.

Q. When he started in?—A. Yes, sir.

Q. You were right there by him?—A. Yes, sir.

Q. Did you see anyone else around there besides yourself?—A. There were different people coming in and standing around.

Q. On the outside of the rope?—A. Yes, sir; a good part of the time.

Q. When the voters handed the ballots and he went and put them into the box, where did they go; how did they get out from the rope inclosure?—

A. They passed to the southeast corner and went out there; there was an opening there for them to go out—the southeast corner of the voting place.

Q. Did they have to pass you, or were you to the west?—A. I was inside part of the time, and when I was inside I was clear to the west side, and when I was on the outside I occupied a seat about that way [indicating] from where the gentleman took the tickets.

Q. Which way from the man who took the tickets?—A. A little south and a little bit east.

Q. South and east from the one who took the tickets?—A. Yes, sir.

Q. Then, the voters passed by you to go out?—A. They passed out inside of that rope.

Q. You had a seat on the outside of the rope?—A. Yes, sir; most of the time.

Q. It was a very small place there, was it not?—A. Not very large.

Q. How much room was there between the rope and the booth?—A. I should imagine about 3 feet, possibly 4.

Q. Did they take down the booth before you counted the ballots?—A. No, sir.

Q. You are positive about that?—A. I feel quite positive.

Q. Did they move it out of the way?—A. I have no recollection of their moving it; no, sir.

Q. If they took that down before they began counting, you don't now remember it?—A. I don't remember of them taking it down; I don't think they did.

Q. Where did they begin to count—which side of the booth?—A. On the north side.

Q. Did they have tables there?—A. Yes, sir.

Q. How many of them were there engaged in counting?—A. I saw Mr. Knowles; he did the counting.

Q. That is, he read the ballots?—A. Yes, sir; Mr. Gouldie and Mr. Preston were acting as clerks.

Q. Mr. Knowles was the alderman from that ward, was he not?—A. Yes, sir.

Q. And when Mr. Hamilton was taken sick and went home Mr. Barber was appointed in his place?—A. He took his place.

Q. Do you know how much time elapsed from the time Mr. Hamilton left before Mr. Barber took his place?—A. No, sir; it was but a very short time; I am not sure how long.

Q. Mr. Barber didn't go there until the noon hour?—A. Yes, sir.

Q. He was there when you saw Mr. Hamilton taking the tickets?—A. No, sir; I don't remember of seeing Mr. Barber there before; but I was told that Mr. Hamilton was sick—

Q. (Interrupting.) Never mind that. You heard he was sick?—A. Yes, sir.

Q. Who did you hear say that?

Mr. ADAMS. I move to strike out what he heard and object to the question as calling for hearsay evidence and as immaterial.

Q. Who did you hear say he was sick?

Mr. ADAMS. The same objection.

A. I don't know; I couldn't say who I did hear say he was sick.

Q. You learned, anyway, that he was sick?—A. Yes, sir; I understood he went home sick.

Q. Do you know of their sending for Mr. Barber?—A. No, sir; I don't know who sent for him or anything about it.

Q. Who told John C. Nichols to take the ballots until they got some one there?—A. I didn't hear anyone tell him.

Q. Did you hear anybody say anything about it?—A. No, sir.

Q. It was not but a few moments before Mr. Barber took his place?—A. It wasn't but a little while.

Q. Were you right there by Mr. Nichols all the time he was acting in that capacity?—A. Yes, sir.

Q. You didn't see Mr. Nichols do anything but receive the ballots, put them in the box, and call out the names?—A. That is all I saw.

Q. He didn't open any ballots there; you would not have permitted that?—A. No, sir; I didn't see him open any.

Q. Now, Mr. Overmyer, in the former part of your direct examination you say you saw one have his ballot marked, and that was Elder Ferguson?—A. Yes, sir.

Q. That is the only man you saw have his ballot marked by anybody else?—A. Yes, sir; when I was in the booth there.

Q. If they asked for instructions or assistance, you don't know whether anybody marked their ballots for them, do you, except this one man Elder Ferguson?—A. I don't know of any others.

Q. How long had you known Elder Ferguson?—A. Well, I have known him for, I guess, 20 years.

Q. How long has he been blind so he could not mark his ballot?—A. He was not blind, but his eyesight has failed, and he is quite feeble.

Q. Did you ever know of his having his ballot marked before?—A. I don't know.

Q. Do you know whether Mr. Knowles is acquainted with him?—A. I don't know whether he is or not.

Q. Were his eyes so affected you could notice it by looking at him when he was walking on the street?—A. He looked so to me; yes, sir.

Redirect examination by Mr. ADAMS:

Q. I understood you to say that others besides Mr. Ferguson, who applied for instructions that day there, that some of the inspectors went into the booths with those others?—A. Yes, sir.

Q. But you don't know just what occurred in there?—A. No, sir; I do not.

Mr. MAYNARD. I understand it is the rule that you should exhaust the witness unless something new has been called out. It is an improper way to conduct the examination of a witness to examine him a little while, then turn him over for cross-examination, and then commence on the same topic again.

Q. Did you notice what was done with any of those ballots that went into these rolls that you say Mr. Pray had on his arm there after the counting that evening or day? Do you know what had been done with them when they began counting there, these ballots that Mr. Pray got?—A. The ballots were being counted and rolled up.

Q. Were the ballots or any of them rolled up in the rolls that Mr. Pray got there that evening, the ballots that the officers and clerks of the election had been using there in making the count of the vote of the election that day?

Mr. MAYNARD. The witness has been asked that question twice, and he stated both times that he didn't know whether they were ballots that had been used or were unused ballots. I object to it as leading and suggestive.

Mr. ADAMS. I think you are mistaken about that. We will ask him again.

A. It is pretty hard for me to tell what was on the inside of the papers when rolled up with the unprinted side outside. If they were not ballots that had just been counted, why, then, I don't know anything about what went on there that day. I am positive they were, but, as a matter of course, I can not read through a stone wall or nothing of the kind.

Q. Those ballots that Mr. Pray picked up, or got, rather, that were in the rolls he got that you have spoken of, where did those ballots come from when they were put into those rolls, did you notice?—A. They were laying there as counted; they were rolled right up and strings tied around them. I helped tie some of the strings around; so did Mr. Nichols.

Q. Those were tied up, those that were on the table where you helped tie up some—were those the ballots that had been voted there that day?—A. I am satisfied in my own mind they were; but, just as I said awhile ago, I couldn't read them after they were folded and the printing on the inside.

Q. Did you see any ballots brought on that table before those were counted up from any other place in the voting precinct there that day?—A. No, sir; I did not.

Recross-examination by Mr. MAYNARD:

Q. Did you see any ballots put in the ballot boxes?—A. Yes, sir.

Q. You saw the ballots sealed after they got through counting?—A. I didn't see them sealed; no, sir; I didn't notice.

Q. You left before they were sealed?—A. No, sir; I presume not; I presume it was sealed; but when you come to say I saw it, I did not.

Q. You could not tell what the ballots were from the papers you saw on his arm?—A. You have my statement.

Q. You said you could not; I suppose that was right?—(No answer.)

Q. Now, Witness, you don't know but what the ballots that were counted were folded and put in the ballot box and the ballot box sealed with them in it, do you?—A. I didn't see anything of that kind done.

Q. You don't know but what it was done?—A. No, sir; I don't know but what it was done.

Q. I will ask you how many men you saw there asking for instructions as to their ballots?—A. I didn't keep any count.

Q. Can you name any other besides Mr. Ferguson?—A. No, sir; I can't tell the names of any others. My observation of that matter was taken by the number of people I saw in the booth.

Q. You don't know what was said at all?—A. No, sir.

Q. You saw some feet under there?—A. They went in for instructions; I don't know who they were; if I knew at the time I don't remember now.

Q. You don't know that anyone asked any person at the booth to mark their ballot for them, except Mr. Ferguson?—A. No, sir; I do not.

Redirect examination by Mr. ADAMS:

Q. Were there others who asked for instructions as to how to mark their ballots besides Mr. Ferguson that day?—A. I couldn't say that I heard them.

Q. Did you hear them ask—others besides him?—A. No, sir.

Q. Besides Elder Ferguson ask for any instructions that day?—A. He was the only one I heard ask.

Q. Well, did you see, if you did not hear, anyone ask for instructions; did you see the inspector in the booth there that day with any other voters besides Elder Ferguson?—Yes, sir.

Q. How many different ones, besides Elder Ferguson, do you recall that the inspector went into the booth with them that day—your best recollection?—

A. I should say half a dozen or such a matter, in my judgment.

Q. Did you hear what was said, if anything was said, or any talk was had with those others than Mr. Ferguson when the inspector was in the booth?—

A. No, sir.

Q. You didn't hear the conversation?—A. No, sir.

MYRON HAWKINS, being by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Hawkins, where do you reside?—A. In Charlotte.

Q. I think you have lived here sometime?—A. Yes, sir; 12 or 13 years.

Q. Continuously?—A. Yes, sir.

Q. Your age?—A. I am 45.

Q. Were you or not a member of the board of county canvassers of Eaton County following the November 5, 1912, election, and of the votes cast at that election?—A. I was appointed a member of the board—a special member for that election owing to the illness of one of the regular members.

Q. Did you become a member of that board when the board convened?—A. Yes, sir.

Q. Did you assist in the beginning of its work and remain a member of the board of canvassers until the work of the board was completed?—A. Yes, sir.

Q. Where did the board meet?—A. In the county clerk's office.

Q. In the courthouse in Charlotte?—A. Yes, sir.

Q. Who were the members of the board besides yourself?—A. James H. Brown, chairman, and George Little. I think his middle name is H.

Q. Who acted as clerk of the board?—A. The county clerk.

Q. John C. Nichols?—A. Yes, sir.

Q. Had you been acquainted with John C. Nichols before that election or not?—A. Yes, sir; for some time.

Q. Was that John C. Nichols, or not, the same John C. Nichols who was a candidate for circuit court commissioner on the Republican ticket in this county at that November 5, 1912, election?—A. He was the same one.

Q. How long did that board of canvassers remain in session?—A. I think three days.

Q. Do you recollect on what date it convened?—A. Yes, sir; I think on Tuesday at 1 o'clock.

Q. Of what month?—A. November; the date I am not positive of.

Q. How were the returns from the various precincts in the county presented to the board of canvassers? In what shape were they in when presented?—A. Well—

Q. (Interrupting.) Were they contained in anything?—A. I think they were contained in the original envelopes in which they came; that is my impression, although I am not sure about that.

Q. Who brought the returns from the various precincts in the county of Eaton before your board of canvassers?—A. I think the original returns were on the table in the inner room of the county clerk's office when we went in, that is my impression; if not there they were brought quickly afterwards, by whom I could not say.

Q. Were or were not those returns that were on the table when your board convened—were the envelopes containing those returns unsealed or sealed?—A. Those were all unsealed.

Q. Unsealed?—A. Yes, sir.

Q. Did you examine them?—A. We did not use those in making the canvass because of the fact that they were addressed to the county clerk and we knew they had been opened and the returns made from them and placed in a book.

Q. What book?—A. In the statement of the vote.

Q. You mean the report you finally made?—A. I think that report you have in your hand, or similar to that.

Q. I will show you Exhibit 6, for identification only, and ask you whether that is the canvass and determination made by your board of canvassers of the election referred to?—A. Yes, sir; I think it is; it appears to be.

Q. Is that your signature appended there?—A. Yes, sir.

Q. After examining it, what do you say whether it is or not?—A. Yes, sir; that is the canvass our board made.

Q. In whose handwriting are the names of the townships and election districts, if you know, and the figures and the respective officers at the head of the columns under which the figures appear? Whose handwriting, if you know, is that?—A. I couldn't tell you whose handwriting it is.

Q. When your board convened were any of those names—the townships, election districts, and the names of the candidates for the respective offices, as contained in that exhibit—written in the book?—A. I think the names of the officers voted for were, but I would not want to say the townships were, but my impression is they were.

Q. In referring to page 12 of Exhibit 6 just shown you, under the heading, "Representative in Congress," will you state whether when your board of canvassers convened the figures that appear under the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley were in that book when you convened, on that page?—A. Yes, sir.

Q. State whether at the time you convened the totals were here opposite the figures under the names I have just read, under the head, "Representative in Congress," were contained in that book or not?—A. I think they were.

Q. The envelopes which you stated were on the table in the clerk's office when your board convened, how were those containing these election returns—to whom were those envelopes addressed?—A. To the county clerk.

Q. Were those envelopes, when your board first met to canvass the votes in the precincts of the county, all open—seals broken?—A. I think they were, yes, sir.

Q. Now, did your board of county canvassers examine any of the returns of the several election boards of the votes that were cast in those several precincts in this county at the November 5, 1912, election?—A. Yes, sir.

Q. What returns did the board of canvassers examine in making your canvass?—A. We examined the duplicate returns that went to the judge of probate.

Q. Those duplicate returns, as you call them, were they or not before your board for examination?—A. Well, we asked for them as quick as the board convened.

Q. Were they delivered to the board?—A. Yes, sir; we got them from the vault, Mr. Brown and myself.

Q. What vault?—A. The vault of the judge of probate.

Q. Were those returns contained in anything?—A. Yes, sir; in the original envelopes in which they were addressed to the judge of probate.

Q. They were contained in the envelopes addressed to the judge of probate—addressed to the board of county canvassers, care of the judge of probate or the probate register at Charlotte, Mich.?—A. Yes, sir.

Q. Were those envelopes, which you say you obtained from the office of the judge of probate, all sealed when you got them from that office or not all sealed?—A. Well, I am not sure they were all sealed; I would not want to say they were not or that they were. It is my impression that they might not have been all sealed.

Mr. MAYNARD. I move that the answer go out. He says he does not know.

Q. What is your best recollection about it?—A. Well, we had a discussion with reference to whether one or two of them were broken open or not by the board.

Q. For the purpose of refreshing your recollection, is it not a fact that when the returns from the election precincts of this county of Eaton were obtained by your board of canvassers from the office of the judge of probate, that there were from five to seven of those envelopes containing returns—election returns—on which the seals on the envelopes were entirely broken?—A. I don't think there were as many as that.

Q. How many were there?—A. Well, I don't like to try to answer that question definitely.

Q. Your best recollection.—A. I am not sure—

Mr. FELLOWS. He has already testified that he can not say whether any were broken or not. He said he could not testify whether any were broken or not.

Q. Can you give us your recollection how many were broken, if you have a recollection of any of them being broken?—A. I don't remember how many there were.

Q. Were any of them broken?—A. I think there were perhaps a few of them that were, but I am not sure about that. I would like to explain in reference to that. When we carried them in another member of the board opened the

returns, and I have a remembrance that on one or two occasions he referred to the fact that they were apparently broken in the mail.

Q. I suppose you examined the envelopes, did you, or didn't you?—A. We examined them together.

Q. As a member of the board, did you examine the returns you had received from the office of the judge of probate—examine the envelopes containing those returns?—A. We did as we came to them. We used the returns of each township to check against the vote.

Q. Did you have to take them out of the envelopes to do that?—A. Yes, sir.

Q. In taking them out of the envelopes, as a member of that board, did you examine those envelopes yourself personally?—A. No; I couldn't say that I did.

Q. Who did open them?—A. Mr. Brown, the chairman of the board.

Q. I have had six of these envelopes marked by the commissioner, beginning with Exhibit 7 and ending with Exhibit 12; all of them, each one of them, are addressed to the board of county canvassers, care the probate judge or register of probate at Charlotte, Mich. Will you examine those; then I will ask you to state whether you did or did not examine those particular envelopes at any time while your board of county canvassers were convened?—A. We examined all of the returns that were delivered to us by the judge of probate.

Q. I call your attention to Exhibit 7. Did you notice when that envelope came to your board of canvassers it had indorsed on it, "Received in bad condition at Charlotte, Mich."?—A. Yes, sir.

Q. I call your attention to Exhibit 8 and ask you whether when your board was in session you did or did not personally observe that there was this indorsement on Exhibit 8: "Received in bad condition at Charlotte, Mich."?—A. Mr. Brown called our attention to that—they were brought in as quick as he picked them up—indorsement on the envelope.

Q. I call your attention now to Exhibit 9, which purports to be the returns from Bellevue Township, Eaton County, addressed to the "county board of canvassers, care judge of probate." Did you notice when that envelope came in before your board of county canvassers it had indorsed on the back of it, "Received unsealed by carrier No. 4, Hall"?—A. Yes, sir.

Q. Did you notice that indorsement was on that when that particular envelope came before your board?—A. I noticed it at the time, and the matter was discussed by the board during our session; I don't know whether immediately when it was received or whether it was later.

Q. I call your attention to Exhibit 10, which purports to be the returns from the township of Eaton Rapids, Eaton County. Did you notice when that return came before your board of canvassers that it had indorsed upon it, "Received unsealed at Charlotte, Mich."?—A. I don't remember that; no, sir.

Q. I call your attention to Exhibit 11, purporting to be the returns from the township of Vermontville, Eaton County, and ask you whether when that envelope came before the board of canvassers, whether you did or did not notice indorsed upon the back of that these words, "Received unsealed by carrier No. 4, Hall"?—A. That matter was discussed by our board at the time they came in.

Q. I call your attention to the returns from the township of Windsor, Eaton County, Exhibit 12. State whether you noticed personally at the time that return came before your board of canvassers whether there was an indorsement on it as follows: "Received unsealed at Charlotte"?—A. I don't remember of noticing that.

Q. The indorsements that I have called your attention to, as to the condition of the sealing, on Exhibits 7, 8, 10, and 12, are indorsed on those respective exhibits by means of a stamp, are they not?—A. Yes, sir.

Q. Evidently a rubber or metal stamp?—A. Yes, sir.

Q. And on Exhibits 9 and 11 the indorsements of the unsealing are written on in ink?—A. Yes, sir.

Q. On the back of the two exhibits?—A. Yes, sir.

Q. The sealing on the back of these exhibits in each instance, those I have referred to, are sealing wax and the stamp or impression made in the wax so it is readable wherever the sealing wax is sufficiently preserved?—A. Yes, sir.

Q. That was right over the folder that closed the envelope containing the returns?—A. Yes, sir.

Q. So if those seals had been unbroken when they came to your board, without in some way cutting or tearing the envelope the returns could not have been seen?—A. No, sir.

Q. Don't you know that each one of those that I have called your attention to were, as a matter of fact, unsealed when they were presented to your board

of county canvassers?—A. Well, I should presume that they were; that would indicate that they were.

Q. You noticed that some of the seals had been broken before your board, did you?—A. Yes, sir; the chairman called our attention to it.

Q. Did you or not notice any member of your board breaking any of the seals of some of the envelopes?—A. I think I broke some of the seals myself, probably not more than one or two; Mr. Brown was called out for—and I did that while he was out.

Q. Having called your attention to these Exhibits 7 to 12, inclusive, I ask you now whether your best recollection is not that each one of those exhibits had its seal on the envelope broken when they came into the possession of your board of county canvassers when you met first?—A. I think probably they were; yes, sir.

Q. Did you have, when your board met there, the returns from every precinct in the county of Eaton—obtained, I mean, from the judge of probate's office?—A. I think not.

Q. What precinct did you fail to receive an envelope and election returns from in those you got from the judge of probate's office?—A. I couldn't tell you now.

Q. Do you recollect—for the purpose of refreshing your recollection I suggest it—that it was from the township of Carmel that there was no return among those received from the office of the judge of probate?—A. No, sir; I don't recall what township it was that was missing. When we came to one certain town on the statement blank you have before you we looked for the returns from that township and we didn't have them.

Q. Did you make any further effort than you originally made in getting the returns for finding the missing returns? What further did you do to find out?—A. Mr. Brown and I went back to the judge of probate's office and called his attention to the fact that the returns from that township were missing.

Q. What township?—A. From that township we missed.

Q. What township?—A. The one we were looking for—I couldn't tell you what township. We called his attention to the fact that it was missing, and he assured us that the returns had been placed by himself in the vault, and we looked in the vault again to see whether we had overlooked it, but it was not there.

Q. Did you find that return in the custody of the judge of probate at any time while your board was in session?—A. No, sir; we did not.

Q. You then determined your canvass and made your report without having received from the judge of probate the returns from some one precinct in the county of Eaton?—A. Yes, sir.

Q. In getting at the canvass of the vote in that particular precinct what did you make the canvass from?—A. We had to use the canvass from the county clerk; we had nothing else to go by.

Q. That was open when it came into the hands of your board?—A. Yes, sir.

Q. Did you have any sealed returns from the second ward in the city of Grand Ledge, Mich., the township of Eaton Rapids, the township of Windsor, the township of Bellevue, the township of Vermontville, and the first ward in the city of Grand Ledge, Mich., that you received from the office of the judge of probate or from the office of the county clerk from which to make your canvass of those precincts I have just mentioned?—A. I would not want to say that we did.

Q. What do you say as to whether you did or did not?—A. Evidently we did not.

Mr. ADAMS. I will offer in evidence from page 12 of Exhibit 6 the names of the candidates, the first heading being this: "Statement of votes given at the general election held Tuesday, November 5, 1912." Under that heading, "Representative in Congress." Under the heading "Representative in Congress" is "John M. C. Smith, Claude S. Carney, Levant L. Rogers, Edwin N. Dingley." Under the heading, over to the left-hand side of page 11, under the heading "Names of township and election districts":

BELLEVUE.

Under the name of John M. C. Smith.....	246
Under the name of Claude S. Carney.....	155
Under the name of Levant L. Rogers.....	2
Under the name of Edwin N. Dingley.....	45
Total	448

BENTON.

Under the name of John M. C. Smith	158
Under the name of Claude S. Carney	102
Under the name of Levant L. Rogers	4
Under the name of Edwin N. Dingley	27
Total	291

BROOKFIELD.

Under the name of John M. C. Smith	87
Under the name of Claude S. Carney	96
Under the name of Levant L. Rogers	6
Under the name of Edwin N. Dingley	41
Total	230

CARMEL-BROOKFIELD.

Under the name of John M. C. Smith	137
Under the name of Claude S. Carney	82
Under the name of Levant L. Rogers	
Under the name of Edwin N. Dingley	16
Total	235

CHESTER.

Under the name of John M. C. Smith	109
Under the name of Claude S. Carney	93
Under the name of Levant L. Rogers	
Under the name of Edwin N. Dingley	44
Total	246

DELTA.

Under the name of John M. C. Smith	110
Under the name of Claude S. Carney	95
Under the name of Levant L. Rogers	4
Under the name of Edwin N. Dingley	68
Total	277

EATON.

Under the name of John M. C. Smith	139
Under the name of Claude S. Carney	43
Under the name of Levant L. Rogers	
Under the name of Edwin N. Dingley	40
Total	222

EATON RAPIDS TOWNSHIP.

Under the name of John M. C. Smith	98
Under the name of Claude S. Carney	75
Under the name of Levant L. Rogers	4
Under the name of Edwin N. Dingley	50
Total	227

HAMLIN TOWNSHIP.

Under the name of John M. C. Smith	87
Under the name of Claude S. Carney	77
Under the name of Levant L. Rogers	2
Under the name of Edwin N. Dingley	67
Total	233

CARNEY VS. SMITH.**61****KALAMO TOWNSHIP.**

Under the name of John M. C. Smith	115
Under the name of Claude S. Carney	108
Under the name of Levant L. Rogers	2
Under the name of Edwin N. Dingley	53
Total	278

ONEIDA TOWNSHIP.

Under the name of John M. C. Smith	69
Under the name of Claude S. Carney	94
Under the name of Levant L. Rogers	8
Under the name of Edwin N. Dingley	43
Total	214

BOXAND TOWNSHIP.

Under the name of John M. C. Smith	180
Under the name of Claude S. Carney	61
Under the name of Levant L. Rogers	
Under the name of Edwin N. Dingley	70
Total	300

SUNFIELD TOWNSHIP.

Under the name of John M. C. Smith	174
Under the name of Claude S. Carney	104
Under the name of Levant L. Rogers	1
Under the name of Edwin N. Dingley	66
Total	345

VERMONTVILLE TOWNSHIP.

Under the name of John M. C. Smith	110
Under the name of Claude S. Carney	140
Under the name of Levant L. Rogers	2
Under the name of Edwin N. Dingley	136
Total	388

WALTON TOWNSHIP.

Under the name of John M. C. Smith	139
Under the name of Claude S. Carney	135
Under the name of Levant L. Rogers	3
Under the name of Edwin N. Dingley	86
Total	363

WINDSOR TOWNSHIP.

Under the name of John M. C. Smith	174
Under the name of Claude S. Carney	92
Under the name of Levant L. Rogers	3
Under the name of Edwin N. Dingley	75
Total	344

CHARLOTTE, FIRST WARD.

Under the name of John M. C. Smith	71
Under the name of Claude S. Carney	65
Under the name of Levant L. Rogers	7
Under the name of Edwin N. Dingley	18
Total	161

SECOND WARD, CITY OF CHARLOTTE.

Under the name of John M. C. Smith	161
Under the name of Claude S. Carney	107
Under the name of Levant L. Rogers	10
Under the name of Edwin N. Dingley	22
Total	300

THIRD WARD, CITY OF CHARLOTTE.

Under the name of John M. C. Smith	214
Under the name of Claude S. Carney	116
Under the name of Levant L. Rogers	2
Under the name of Edwin N. Dingley	31
Total	363

FOURTH WARD, CITY OF CHARLOTTE.

Under the name of John M. C. Smith	229
Under the name of Claude S. Carney	140
Under the name of Levant L. Rogers	3
Under the name of Edwin N. Dingley	47
Total	419

FIRST WARD, EATON RAPIDS.

Under the name of John M. C. Smith	119
Under the name of Claude S. Carney	63
Under the name of Levant L. Rogers	3
Under the name of Edwin N. Dingley	44
Total	229

SECOND WARD, EATON RAPIDS.

Under the name of John M. C. Smith	99
Under the name of Claude S. Carney	45
Under the name of Levant L. Rogers	2
Under the name of Edwin N. Dingley	36
Total	182

THIRD WARD, EATON RAPIDS.

Under the name of John M. C. Smith	81
Under the name of Claude S. Carney	70
Under the name of Levant L. Rogers	5
Under the name of Edwin N. Dingley	49
Total	205

FIRST WARD, GRAND LEDGE.

Under the name of John M. C. Smith	142
Under the name of Claude S. Carney	141
Under the name of Levant L. Rogers	10
Under the name of Edwin N. Dingley	128
Total	421

SECOND WARD, GRAND LEDGE.

Under the name of John M. C. Smith	65
Under the name of Claude S. Carney	91
Under the name of Levant L. Rogers	11
Under the name of Edwin N. Dingley	103
Total	270

Mr. ADAMS. I offer in evidence, as contained on page 27 of Exhibit 6, the following: "Statement of votes given at the general election held Tuesday, November 5, 1912." The whole number of votes given for the office of Representative in Congress was 7,191. They were given for the following-named persons:

John M. C. Smith received-----	3,302
Claude S. Carney received-----	2,390
Levant L. Rogers received-----	94
Edwin N. Dingley received-----	1,405
Total -----	7,191

Cross-examination by Mr. FELLOWS:

Q. When you came up here you found that the returns in the clerk's office had been opened and the vote had been tabulated in this book which is marked "Exhibit 6"?—A. Yes, sir.

Q. Those returns were on the table in one of the rooms of the clerk's office?—A. Yes, sir.

Q. You and the other members of the board of county canvassers then went to the vault of the judge of probate, and from that you got the returns addressed to your board?—A. Yes, sir.

Q. That had been sent in the care of the judge of probate or the register?—A. Yes, sir.

Q. You opened those and went over and checked up with this tabulation?—A. Yes, sir.

Q. And you found in each and every instance that the tabulation was correct?—A. Well, that is hardly right as to all of them.

Q. If there were errors, you made the corrections yourself?—A. Yes, sir.

Q. Now, these envelopes that were sent to your board the wax on the back of them is brittle wax?—A. I presume it is.

Q. You examined it so as to be able to say definitely?—A. Yes, sir; it is.

Q. In the seals or under the sealing wax you can see that the election seal of the various precincts has been impressed in this wax when hot?—A. Yes, sir.

Q. And that wax has dropped down over the flap of the envelope?—A. Yes, sir.

Q. And then the election seal put on them while hot and left to cool afterwards?—A. Yes, sir.

Q. After it cooled it became brittle?—A. I presume that is so.

Q. By an examination you would say that is so, wouldn't you?—A. Yes, sir.

Q. In the matter of these precincts where you found that they had been received at the judge's office or the post office here in bad condition, you found no discrepancy in any of those from the returns already on hand?—A. I don't recall any.

Q. You found no apparent alteration or erasure in any of those where the seals were broken?—A. No, sir.

Q. Who were the members of your board?—A. James H. Brown, George Little, and the county clerk, I believe, was secretary.

Q. The county clerk is a member of the board and is secretary?—A. Yes, sir.

Q. To what party did Mr. Brown belong?—A. He is a Republican, I think.

Q. To what party does Little belong?—A. I couldn't answer that question.

Q. You are a Democrat?—A. Yes, sir; supposed to be.

Q. Isn't it your recollection that Little is a Democrat?—A. I have been told he was.

Mr. ADAMS. I move that answer be stricken out as hearsay.

Q. Your understanding was that it was a Democratic board?

Mr. ADAMS. I object to what he understood as incompetent, irrelevant, and immaterial.

Q. Answer the question.—A. I have been told it was Democratic.

Q. Was it not your understanding that Mr. Little was a Democrat? Is there any question in your mind about his being a Democrat?—A. No, sir; I don't know as there is.

Q. There is no question in your mind about your being a Democrat?—A. No, sir.

Q. There is no question in your mind about the board being Democratic?—A. Supposed to be.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for a conclusion.

Q. Now, did you see anybody appear before that board in behalf of Mr. Carney and protest the counting of the ballots?—A. Yes, sir.

Q. Who appeared there?—A. Samuel Robinson.

Q. Did Mr. Carney himself appear?—A. Yes, sir.

Q. They protested against the counting of this vote?—A. Yes, sir.

Q. Your board held adversely to them?—A. Yes, sir.

Q. Now, I will ask you, Mr. Hawkins, to give us—you can find it much easier than I can—the total vote received by the various candidates on the Democratic ticket in the county, commencing with the electors.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

Q. The total vote in the county on the Democratic electors first.—A. The Democratic electors, the first one was Andrew J. Lavalley; he received 2,481; that is about the average all the way through.

Q. There is no material difference on the electors?—A. No, sir.

Q. Now turn to the State ticket; the governor is first. Before you read the vote on governor I will ask you this: The Democratic candidate for governor ran considerably ahead of his ticket in this county and all over?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and the conclusion of the witness. The figures show for themselves how he ran in this county, and outside of this county it is irrelevant and immaterial and incompetent.

(Last question read.)

A. He ran ahead in this county.

Q. Don't you know that he did all over?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial; it is hearsay and a conclusion.

(Last question read.)

A. I guess that is current knowledge.

Q. He was elected by something like 24,000 on the State ticket and the balance of the State ticket was something like 30,000 behind the Republicans; isn't that correct?

Mr. ADAMS. I object to that as irrelevant and immaterial, calling for the conclusion of the witness, hearsay, and not the best evidence.

A. I am not sure about the figures.

Q. That is substantially correct?

Mr. ADAMS. The same objection as to the last question.

A. I presume they were.

Q. Give me the vote on governor.—A. The vote for Ferris was 3,253.

Q. What was the vote for the Democratic candidate for lieutenant governor in Eaton County?—A. It was 2,632.

Q. The Democratic candidate for secretary of state?—A. 2,546.

Q. The Democratic candidate for State treasurer?—A. 2,557.

Q. The Democratic candidate for auditor general?—A. 2,528.

Q. And the attorney general?—A. 2,531.

Q. The land commissioner?—A. 2,542.

Q. The two Democratic candidates for justices of the supreme court?—A. Persons, 2,543, and Yapple, 2,571.

Q. Now give me the Congressman at Large.—A. 2,511.

Q. Give me the Senator, I think is next.—A. Representative in Congress.

Q. Give me that again: I think we have had it once.—A. 2,390.

Q. Give the Senator.—A. Kelly, 2,513.

Q. Now the member of the legislature.—A. 2,550.

Q. Now, if you will turn to the county ticket.—A. 2,597—

Q. That was for sheriff?—A. No; the judge of probate first.

Q. The next?—A. The sheriff, 2,831; the county clerk, 2,573; county treasurer, 2,586; the register of deeds, 2,719; the prosecuting attorney, 2,838; and the circuit court commissioners, 2,874.

Q. Now the coroner?—A. 2,630 one of them got and the other 2,646.

Q. The surveyor?—A. 2,654.

Q. Did you elect a drain commissioner?—A. Yes, sir; 3,193.

Q. Have you it handy so you can turn to the vote in Sunfield Township, all those you have given me before, taking the first elector?—A. The first Democratic elector in Sunfield was 105.

Q. Is that a fair average of all of them?—A. Yes; they were all alike.

Q. Now the governor?—A. 137.

Q. Lieutenant governor?—A. 108.

Q. Secretary of state?—A. 105.

Q. State treasurer?—A. 109.

Q. Auditor general?—A. 104.

Q. The attorney general?—A. 105.

Q. The land commissioner?—A. 106.

Q. Justices of the supreme court?—A. 106 for Persons and Yapple 107.

Q. Congressman at Large?—A. 106.

Q. Representative in Congress?—A. Carney, 104.

Q. The Democratic candidate for senator, Kelly?—A. 109.

Q. Member of the house?—A. 104.

Q. Now turn to the county ticket for the Democratic candidates?—A. 104 for judge of probate, 115 for sheriff, 109 for county clerk, 113 for county treasurer, 115 for register of deeds, 110 for prosecuting attorney, 118 for circuit court commissioner; for coroner, 108 for one and 109 for the other.

Q. Surveyor?—A. 113.

Q. How about the drain commissioner?—A. 79.

Q. I show you Exhibit 8, an envelope addressed to the board of county canvassers, care the judge of probate or register of probate, purporting to contain the returns from the first ward of the city of Grand Ledge. Was there any mucilage on the flap?—A. No, sir.

Q. Will you examine those other exhibits shown you by Judge Adams and see if there is any mucilage on the flaps of any of them?—A. No, sir; no mucilage on any of them.

Q. The only method of fastening any of them is with sealing wax?—A. That is all.

Q. Do you know whether the Republican candidate for drain commissioner lived in Sunfield Township?—A. I think he did; yes, sir.

Redirect examination by Mr. ADAMS:

Q. At the November 5, 1912, election there were only two tickets in the field in the county of Eaton—Republican and Democratic—on the county ticket?—A. Yes, sir.

Q. In the State outside of the county—Representatives in Congress at Large and Representatives—there were four tickets?—A. Yes, sir.

Q. Also on the other State officers and electors?—A. Yes, sir.

Q. As shown by your canvass—Exhibit 6, your attention is directed—how many tickets were there in the field, as shown by that exhibit, on county officers in the county of Eaton at the November 5, 1912, election? There were two tickets as shown by your canvass in the county of Eaton on county officers?—A. That is all.

Q. It is shown by your canvass, as made and filed by the board of which you were a member, on all officers from and including Representatives in Congress, State officers, and the electors for President. There were how many candidates on the ticket in this county at that election?—A. Four.

Q. I want to get now, if you will read into the record, the total vote in the county of Eaton for the Republican electors, commencing with governor, the total vote in the county of Eaton.—A. William J. Livingston, Republican elector, 2,335.

Q. The governor next—the Republican candidate for governor?—A. Amos Musselman, 2,462.

Q. Lieut. Gov. Ross?—A. 2,742.

Q. Secretary of state?—A. 2,801 for Martindale.

Q. State treasurer?—A. 2,762; auditor general, Fuller, 2,783; Grant Fellows, attorney general, 2,797; State land office commissioner, 2,771; justice of the supreme court, Steere, 2,781; justice of the supreme court, Kuhn, 2,792; Congressman at large, Kelly, 2,891; Representative in Congress, Smith, 3,302; State senator, William L. Smith, 2,860; representative, State legislature, E. G. Pray, 3,117.

Recross-examination by Mr. FELLOWS:

Q. Give me the count, commencing with judge of probate.—A. Judge of probate, 3,853; sheriff, 3,802; county clerk, 3,570; county treasurer, 3,678; register of deeds, 3,591; prosecuting attorney, 3,543; one circuit court commissioner, 3,400, and the other commissioner, 3,467; coroner, 3,521 and 3,438; county surveyor, 3,523; drain commissioner, 3,187.

Redirect examination by Mr. ADAMS:

Q. You were asked whether there was any muckage showing on these exhibits, these returns to the judge of probate. I call your attention to Exhibit 11 and ask you to state whether the flap on that envelope does not indicate that some of the sealing wax was under the flap itself?—A. Yes, sir; it does.

Q. So there was that much space to hold that flap down and make it stick to the main part of the envelope. Is that right?—A. Yes, sir.

Q. In addition to that there was a considerable quantity of sealing wax put over the flap on that particular exhibit?—A. Yes, sir.

Q. I call your attention to Exhibit 12 and ask you if there is not a considerable sealing wax smeared under the flap of that, holding it down and sticking it to the main part of the envelope?—A. Yes, sir; clear across.

Q. In addition to that the sealing wax was put right over the flap on to the envelope or seam of that exhibit?—A. Yes, sir.

Q. Take Exhibit 10; there is some sealing wax also under the flap itself, isn't there?—A. Yes, sir.

Q. There is some sealing wax under the flap on Exhibit 7, isn't there, under the bottom edge of the flap itself?—A. Yes, sir.

Q. There is some sealing wax under the flap itself on Exhibit 8, isn't there?—A. Yes, sir; a little.

Q. Now, you have had some experience with sealing wax?—A. Yes, sir.

Q. You know that the express companies use sealing wax a great deal in sealing packages that they transmit in business, don't you?—A. I believe they do.

Q. Now, from an examination of that sealing wax compared with what you have seen on packages going through the large express companies, what do you say as to how that sealing wax compares?

Mr. MAYNARD. We object to that as incompetent and immaterial.

Q. If you can tell from an examination of it? In other words, the sealing wax is more or less brittle that you have had anything to do with?—A. Yes, sir.

Q. This Exhibit 9 has two seals over the flap, hasn't it?—A. Yes, sir.

Q. Upon which the stamp was inserted before the wax cooled?—A. Yes, sir.

Q. Exhibit 12 has four seals over the flap, hasn't it, connecting it with the main part of the envelope?—A. Yes, sir.

Q. Exhibit 11 has three, has it not?—A. Yes, sir.

Q. Exhibit 8 has three such seals?—A. Yes, sir.

Q. Exhibit 7 has five sealing-wax seals, has it not?—A. Yes, sir.

Q. I show you Exhibit 10. There has been three seals of sealing wax over the flap fastening it down to the main part of the envelope?—A. Yes, sir.

(Whereupon the hearing was adjourned until Wednesday 9 o'clock a. m., February 19, 1913, at the supervisor's room in the courthouse in the city of Charlotte, Eaton County, Mich.)

WEDNESDAY, February 19, 1913—9 a. m.

JOHN PALMER, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Palmer, where do you reside?—A. In Sunfield Township.

Q. Eaton County?—A. Yes, sir.

Q. You have lived there how long?—A. I have lived there about 23 years.

Q. What is your age?—A. I am 63.

Q. What business are you engaged in?—A. I am a shipper of grain and produce.

Q. Were you a member of the election board that acted in Sunfield on the 5th day of November, 1912, at the general election?—A. Yes, sir.

Q. I show you a statement book marked "Exhibit 3." You may examine the certificate to that book and tell me whether it is your signature there opposite the name "Inspectors of election." You acted in that capacity at that election at that place, did you?—A. Yes, sir.

Q. What time on that day did the election board organize?—A. At 7 o'clock in the morning.

Q. Were you there at the time of that organization?—A. Yes, sir.

Q. Was Frank H. Bacon a justice of the peace in that township at that time?—A. He was.

Q. Who was at that time supervisor of that township?—A. I was.

Q. Was there any other justice of the peace in that township besides Frank H. Bacon that you know of?—A. There was a man named Hager.

Q. Dennis A. Hager?—A. Yes, sir.

Q. Who was the clerk of that township on the 5th day of November, 1912?—
A. Harry H. Mapes.

Q. Did Harry H. Mapes act as a member of the election board on that day?—
A. Yes, sir.

Q. In what capacity?—A. He acted as one of the clerks part of the time.

Q. In what capacity, if you know, did Frank H. Bacon act on that day at that election?—A. Mr. Bacon marked the initials on the corner of the ballots and he helped count.

Q. Was there any oath administered to Frank H. Bacon before he assumed to act on that election board on that day?—A. Yes, sir.

Q. Who administered the oath to him?—A. We were all sworn in together.

Q. He couldn't very well swear himself, could he? He didn't, did he, or did he? Before answering that question let me show you Exhibit 13, which I have had marked for the purpose of identification. This is entitled on the outside of it, "Poll book of the general election held Tuesday, the 5th day of November, 1912, in the village hall in the township of Sunfield, county of Eaton." Do you find on there any certificate of any oath having been administered to Frank H. Bacon?

Mr. MAYNARD. We object to that as incompetent and immaterial.

A. It is not here.

Q. No such certificate is on there, is there?—A. No, sir.

Q. As a matter of fact, Frank H. Bacon was not sworn; there was not administered to him the oath required by the laws of the State of Michigan to be administered to an inspector of an election.

Mr. MAYNARD. We object to that as incompetent and immaterial; no defect is mentioned in the contest there.

Mr. ADAMS. We will get it in if it is not.

Mr. FELLOWS. That is necessary, and the courts have so held.

Mr. ADAMS. We will give you notice now that any new facts that develop in the taking of this testimony or any other testimony on behalf of the contestant that we shall apply for an amendment to the petition; and you can therefore prepare yourselves to meet the facts presented that may not be set forth in the petition.

Mr. MAYNARD. We will object to the taking of testimony upon matters that are outside entirely of the notice of contest.

Q. As a matter of fact, no oath was administered to Frank H. Bacon before Mr. Bacon began to act on that election board on that election day; isn't that so, to your best recollection? A. I don't remember.

Q. You don't remember of any oath being administered to him? Who administered the oath to the other members of the board; didn't he, being a justice of the peace?—A. Yes, sir.

Q. Is it your recollection now that no oath was administered to Frank H. Bacon before Mr. Bacon began to act on that board on that day? What say you?—A. I couldn't say.

Mr. ADAMS. I desire and do offer in evidence from Exhibit 13 the following, under the heading on this exhibit, which heading is "Oaths to inspectors of election":

"STATE OF MICHIGAN, *County of Eaton*, ss:

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"J. H. PALMER.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912

"FRANK H. BACON, *Justice of the Peace*."

"STATE OF MICHIGAN, *County of Eaton*, ss:

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"DENNIS A. HAGER.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912

"FRANK H. BACON, *Justice of the Peace*."

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election, held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability.

"(No signature.)

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"FRANK H. BACON, *Justice of the Peace.*"

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of inspector of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"FRANK H. BACON.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912."

Mr. ADAMS. There is no signature showing that anybody swore Mr. Bacon. Under the head of "Oaths to clerks of election" the following appears:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of clerk of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"H. H. MAPES.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"FRANK H. BACON, *Justice of the Peace.*"

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of clerk of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"D. W. KNAPP.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"FRANK H. BACON, *Justice of the Peace.*"

Mr. ADAMS. Under the head of "Oaths to gatekeepers at election," the following appears:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of gatekeeper of this election, held on Tuesday, the 5th day of November, A. D. 191—, according to the best of my ability.

"CHARLIE GILBERT.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"FRANK H. BACON, *Justice of the Peace.*"

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of gatekeeper of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"Z. D. SLATER.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"FRANK H. BACON, *Justice of the Peace.*"

Mr. ADAMS. Under the head of "Oaths to ——— at election," appears the following:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge

the duties of the office of instructor of this election, held on Tuesday, the 5th day of November, 1912.

"ALBERT SAYER.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"FRANK H. BACON, *Justice of the Peace.*"

Mr. ADAMS. At the conclusion of this instrument, Exhibit 13, is the following;

"Certificate of inspection.

"STATE OF MICHIGAN, *County of Eaton, ss:*

"We do hereby certify that the foregoing poll list has been carefully compared by us with the duplicate poll list as required by law, and all mistakes found in said poll list have been duly corrected by us, and that said poll lists are now correct and agree with each other.

"In witness whereof we have set our hands at Sunfield this 5th day of November, 1912.

"J. PALMER,

"FRANK H. BACON,

"DENNIS A. HAGER,

"Inspectors of Election held on Tuesday, the 5th day of November, 1912."

Q. You were at that election as an inspector and remained on that day how long, Mr. Palmer?—A. I stayed there until about 12 o'clock at night.

Q. You were there from the time the polls opened until 12 o'clock at night continuously?—A. No, sir; there were times I stepped out; it seemed we had one man to spare.—

Q. (Interrupting.) What do you mean by that?—A. Well, there was nothing for Mr. Hager to do when I was taking the tickets and putting them in the box, so when I wanted to step out for any reason he would take the tickets and relieve me, and if he wanted to step out I would take the tickets and put them in the box and relieve him.

Q. So one inspector handed out the tickets?—A. Mr. Bacon, the justice of peace, marked the corner of the ballots and handed them to Mr. Sayer and he was in front of the booth passing those tickets out to the voters, and as the voters came through the booth I took the tickets from them and deposited them in the box.

Q. Mr. Sayer was the instructor?—A. Yes, sir.

Q. So that you had three inspectors at that election and an instructor besides the clerk?—A. Yes, sir; we had two clerks.

Q. Who did you say was the clerk of that township at that time?—A. H. H. Mapes.

Q. So Mr. Mapes did not act as inspector, he was a clerk there to that election board?—A. Yes, sir.

Q. Well, now, as I understand it, you acted as an inspector and Dennis A. Hager acted as an inspector?—A. Yes, sir.

Q. And Frank H. Bacon acted as an inspector. Did anybody else act as an inspector?—A. I don't think so.

Q. So you had then three inspectors who acted—three men who acted as inspectors. I will put it?—A. Mr. Bacon handed them out to Mr. Sayer.

Q. Mr. Sayer was not an inspector, but an instructor?—A. Yes, sir.

Q. He was sworn in as an instructor?—A. Yes, sir.

Q. And yet he handled the ballots?—A. Yes, sir.

Q. What did Albert Sayer do there with those ballots, just explain that?—A. He would take 25 at a time from Justice Bacon and go out in front of the booth where the voters entered in the gate, between the front gate and the booth, and he would pass the tickets.

Q. Then the voter would go into the booth perhaps and mark his ballot?—A. Yes, sir.

Q. And then what was done with the ballot?—A. The voter would enter into the booth on Mr. Sayer's side of the booth and would come out on our side, and I would take the ballot and deposit it in the box.

Q. How many booths did you have there that day?—A. Four or five.

Q. Mr. Sayer, then, in passing the ballots to the voters was not in sight of the other members of the board, was he?—A. No.

Q. In other words, the booths were between Mr. Sayer, when he handed those ballots to the voters, between those voters and yourself and Mr. Bacon?—A. Yes, sir.

Q. And those booths were so high and so long that a view of yourself and Mr. Bacon was cut off from Mr. Sayer when Mr. Sayer passed these ballots to the voters?

Mr. MAYNARD. I object to that as leading.

Q. Is that true or not?—A. Yes, sir; that is true.

Q. Well, when you went out at any time or times that day, when you did leave the voting place, who took your place?—A. Mr. Hager.

Q. When you were there what did Mr. Hager do?—A. Well, Mr. Hager part of the time would step out on the street, and part of the time he would sit around and talk.

Q. When you were performing the duties you say you performed, Mr. Bacon also being there, Mr. Hager didn't do anything, did he?—A. No, sir.

Q. Was Mr. Sayer, when he passed out these ballots to the voters, within or without the railing?—A. He was within the railing.

Q. Did the election that day adjourn at noon?—A. Well, they adjourned one hour for dinner.

Q. What, if any, announcement—public announcement—was made there of the adjournment?—A. It was announced that we adjourned one hour for dinner.

Q. When that adjournment was taken what was done with the boxes that were used there in the election by the board?—A. We left Mr. Slater there while the rest went to dinner.

Q. Were the books left there in his custody?—A. I couldn't tell you; I don't know what the clerks did with the books.

Q. Did the clerks leave for dinner at the time the board did?—A. Yes, sir.

Q. Was the room in which this election was held locked when you departed for your noon dinner? Or was the door left open so people could go in?—A. I don't think it was locked, but Mr. Slater was looking after things.

Q. The unvoted ballots—when you left for your noon recess what was done with those?—A. I couldn't tell you; I don't remember.

Q. Was there anyone else in the room when the board and the clerks left besides Mr. Slater?—A. I don't think there was anyone else inside of the railing.

Q. Were there any others in the room besides Mr. Slater?—A. I couldn't tell you; they kept their fire apparatus in the room. There was a whole lot of room outside of the railing; some one might have been standing there.

Q. It was held in the fire house?—A. Yes, sir.

Q. What time did the election board resume operations?—A. At 1 o'clock.

Q. When you resumed, after your noon recess, state whether any public announcement was made that the polls were again open.—A. I think so; yes, sir.

Q. Who made that announcement?—A. I don't remember.

Q. Did you after that noon recess act in the same capacity as you did before the recess?—A. Yes, sir.

Q. How about Mr. Sayer?—A. The same.

Q. And Mr. Hager and Mr. Bacon the same and the clerks the same?—A. Yes, sir.

Q. Was there any change in the board or clerks or gatekeepers after the noon recess, that you recall? I mean prior to 12 o'clock that night.—A. Mr. Mapes started out and his father-in-law took his place.

Q. Did Mr. Mapes go out during the time the election was being conducted?—A. Yes, sir.

Q. Who was his father-in-law?—A. Joel H. Bera.

Q. What was Mr. Bera's business at that time; I mean his general business?—A. He was postmaster at Sunfield.

Q. He was the father-in-law of H. H. Mapes?—A. Yes, sir.

Q. When did he first begin to act there in connection with the election on that day?—A. I couldn't say as to the hour; I was out at times.

Q. Any in the forenoon before the recess adjournment?—A. No.

Q. Was he there in the afternoon of that day before 5 o'clock?—A. I don't remember the hours, but I remember that he was there for some time.

Q. In the afternoon before 5 o'clock?—A. No; it was in the evening; I am not positive to the hour he was there.

Q. Are you positive about him being there in the afternoon before 5 o'clock?—A. I couldn't say what hour he was there.

Q. When did you begin to count the ballots?—A. After 5 o'clock.

Q. Now, with reference to the time you commenced counting the ballots, state whether Mr. Bera took Mr. Mapes's place before the counting commenced?—A. He took his place after the counting commenced.

Q. What did Mr. Bera do after he took Mr. Mapes's place?—A. He tallied, I think.

Q. Did he handle the ballots?—A. No, sir; he marked them down as they were called off.

Q. Was there any oath administered to Mr. Bera that day during that election at any time while you were there?—A. No, sir; but he said it was not necessary.

Q. Do you know what Mr. Bera's politics were at that time?—A. No, sir; that is quite a broad question. I have had in my own mind what his politics were for a good many years; I presume he was a Republican.

Q. How long had Mr. Bera been postmaster there at Sunfield?—A. About 16 years.

Q. Continuously?—A. Yes, sir.

Q. No interruption?—A. Not in the least.

Q. State whether Mr. Bera did anything else that you saw there that day except to keep tally?—A. I couldn't say that he did; he was inside of the booth there with the rest of them.

Q. Before Mr. Bera performed any duty there in connection with the election, state whether or not Mr. Bera was in where the inspectors were, where the polls were?—A. He was in and out whenever he wanted to during the day and evening.

Q. Before counting the ballots had he been in there where the board was performing its duties?—A. I couldn't say about that.

Q. How many ballot boxes did you have that day?—A. I think we had three.

Q. How many did you use?—A. I believe we used all of them.

Q. Were they locked or sealed before the counting commenced?—A. Before the counting commenced? I don't think so. I think they were locked all the time, but they were not sealed.

Q. Each one of them, every one of them locked or not?—A. I think so.

Q. Who had the keys to the locks?—A. I don't know.

Q. Were there any ballots counted there before 5 o'clock that day?—A. No, sir.

Q. Who, if anyone, besides Mr. Bera and besides the inspectors and the instructor, Mr. Mapes and Mr. Knapp, assisted in the counting of the votes that were cast on that day at that place?—A. After supper Mr. Mapes did not come back, and Mr. Sayre counted in his place a part of the time, and a part of the time Mr. Witherall.

Q. Who was Mr. Witherall?—A. He was a citizen there.

Q. Mr. Witherall—was there any oath administered to him there that day that you know of?—A. No, sir.

Q. What did Mr. Witherall do in the way of assisting; just explain what you saw him do?—A. Keeping the tally.

Q. Did he do anything else but tally?—A. No, sir.

Q. Did any other one or ones assist at any time when you were present?—A. No, sir; not that I remember of.

Q. Did Mr. Bera act in the capacity of an inspector on that day at that election at any time when you were present?—A. I don't think so; he just marked down and kept the tally.

Q. Do you know whether Joel H. Bera had been acting in any way in the interest of John M. C. Smith, the Republican candidate for Representative in Congress at that election, prior to the election day, at Sunfield?—A. Prior to that day?—A. Prior to that day?

Q. Yes, sir.—A. After Mr. Smith was nominated he was a Smith man.

Q. At 5 o'clock in the afternoon of the 5th of November at that voting place, as I understand you, you commenced counting the votes that had been voted?—A. Yes, sir.

Q. After you began that count at 5 o'clock did you leave that voting place for supper or dinner?—A. The other members of the board had their suppers sent to them. It seems we had one extra man there most of the time, so I stepped home for my supper and the rest of them stayed there.

Q. What time did you get back?—A. I got back about 7 o'clock.

Q. They went on with the count at that time while you were at supper?—A. Yes, sir.

Q. After you got back did any other member of the board leave before 12 o'clock at night?—A. The township clerk was away some of the time.

Q. When the township clerk was absent who, if anybody, acted in his place?—A. Mr. Sayre and Mr. Witherall and Joel H. Bera acted in his place when he was not there.

Q. After you returned there about 7 o'clock that evening, you stayed there how long?—A. I stayed most of the time until midnight.

Q. Were you gone away from the voting place?—A. I was outside a few minutes. A friend of mine was killed with the cars, and I stepped out to see.

Q. At 12 o'clock that night what was done with reference to the counting of the votes in that precinct?—A. Mr. Mapes made a motion that we adjourn until the next morning and finish the count the next morning, and the motion carried.

Q. Did he make a motion to any hour to which the adjournment was to be taken?—A. I think 8 o'clock.

Q. You say the motion was carried?—A. Yes, sir.

Q. Did or did not the board then adjourn?—A. Yes, sir.

Q. What was done with the election books used at that election—the poll books and tally sheets and statement book?—A. I think they were left there until morning.

Q. Where were they left?—A. I think they were left there.

Q. I mean how were they left—on the table?—A. I couldn't tell just how they were left.

Q. What was done with the ballots that had been voted?—A. They were left there.

Q. Where were they left? Describe the place and the manner of leaving them that night when the board went away?—A. I couldn't tell you about that.

Q. Did you stay there until the other members of the board left?—A. I think when we adjourned I went out and left the clerks there.

Q. State whether, from your knowledge, the books used in that election and the ballots that had been voted at that election were locked up in the ballot boxes or anything else in the way of a receptacle for them or not?—A. I couldn't tell what they did do with them.

Q. Do you know whether the votes that had been cast there were locked up when you took that adjournment at 12 o'clock that night? Placed under seal or not?—A. The clerks were there looking after that; I didn't give it any attention.

Q. So you don't know?—A. No, sir.

Q. When did you return to the voting place again to continue your duties as an inspector of that election?—A. I went home at 12 o'clock and went to bed.

Q. When did you come back?—A. I came back at 5 o'clock in the morning.

Q. On the morning of November 6, 1912?—A. Yes, sir.

Q. Did you go back to this place where the election had been held the day before?—A. Yes, sir.

Q. Was there anybody there at that time?—A. Yes, sir.

Q. Who?—A. Mr. Bacon was there.

Q. Frank H. Bacon?—A. Yes, sir.

Q. Anyone else?—A. Mr. Knapp and Hager; I am not sure whether Mr. Mapes was there, or Mr. Bera; one of them was there.

Q. What were they doing when you arrived at 5 o'clock in the morning?—A. Counting the votes.

Q. Did you, from the time you got there at 5 in the morning, assist in the counting of the remainder of the votes?—A. Yes, sir; I told Mr. Bacon I would take his place if he wished to go home; he was tired, so he went home.

Q. What time did you conclude the counting?—A. About 6 o'clock.

Q. Did you look over the ballots that had been counted in your absence, and count them?—A. No, sir.

Q. Did you ever do that before you made and signed the return, certifying the election that you returned to the county clerk of Eaton County?

Mr. MAYNARD. We object to that as incompetent and immaterial.

A. No, sir.

Q. Did you, at any time before you signed the statement book—the certificate page in the statement book—that was addressed to the board of county canvassers in the care of the probate judge, or the register of probate of Eaton County?

Mr. MAYNARD. The same objection.

A. No, sir.

Q. When your board got through on the 6th of November, 1912, with this count, did you at once make that certificate in the statement book which I have referred to, or was it later done?—A. It was done later.

Q. When you got through counting at 6 o'clock, on the morning of November 6, 1912, did your board resolve to adjourn until some other time?—A. We went home to breakfast and met at Mr. Bacon's office and signed the returns later.

Q. Did you pass any resolution before leaving, after completing the count, to adjourn?—A. Nothing of record, only some one said we would go to breakfast and come back to Mr. Bacon's office about 9 o'clock and sign up the returns.

Q. That is Frank H. Bacon you are talking about?—A. Yes, sir.

Q. His office?—A. Yes, sir.

Q. Where was his office with reference to the place the election had been held on November 5?—A. About a block and a half.

Q. Did you meet on the 6th at Mr. Bacon's office?—A. Yes, sir.

Q. Who was present?—A. All the board; all the election committee—the election inspectors.

Q. What election records or books did you have at Mr. Bacon's office at that meeting?—A. I think we had all of them.

Q. How did they get over to Mr. Bacon's office?—A. The clerks carried them over there.

Q. When you finished counting at 6 o'clock on the morning of the 6th of November, 1912, what was done at the time of your adjournment with the tally book, the poll book, statement book, and the ballots that you had counted?—

A. The clerks took the tally books with them. I think they took the votes that we counted and rolled them up and tied a string around them and put them back in the ballot boxes.

Q. After so putting the ballots back, state whether the ballot boxes were locked or not locked?—A. I couldn't tell you.

Q. State whether after these ballots were put back in the ballot boxes after this count was completed, the ballot box or boxes in which those ballots were placed were in any way sealed?—A. I left that to the clerk. I don't know whether he sealed them or not.

Mr. ADAMS. I offer in evidence the certificate attached to the statement book of the general election held November 5, 1912, in Sunfield Township, marked "Exhibit 3," as follows:

" CERTIFICATE.

" STATE OF MICHIGAN, *County of Eaton, ss:*

" We do hereby certify that the foregoing is a correct statement of the votes given in the township of Sunfield, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, 1912.

" In witness whereof we hereunto set our hands at the township of Sunfield, said county and State, this 5th day of November, 1912

" J. H. PALMER.

" FRANK H. BACON.

" DENNIS A. HAGER.

" *Inspectors of Election.*"

Q. Was that certificate in fact made on the 5th day of November, 1912, or on the 6th day of November, 1912?

Mr. MAYNARD. That is objected to as immaterial; there is nothing in the law requiring it to be made on the day of election.

A. It was made on the 6th.

Q. About what time on the 6th of November did you make that certificate or sign it?—A. At 9 o'clock in the morning.

Q. You signed it at Mr. Bacon's place of business?—A. Yes, sir.

Q. That was not the place where the election had been held?—A. No, sir.

Q. It was about a block away from where the election had been held?—A. Yes, sir.

Q. I notice in the certificate the inspectors attached to Exhibit 13 it recites and shows that the certificate was made on the 5th day of November, 1912. State whether that certificate was made on the 5th day of November, 1912, or not.—A. It was made on the 6th.

Q. What time on the 6th day of November, 1912, was that certificate signed by you?—A. About 9 o'clock.

Q. Where did you sign it?—A. In Mr. Bacon's office.

Q. Frank H. Bacon?—A. Yes, sir.

Q. Did the other inspectors sign that certificate at the same time, or approximately the same time, and at the same place you signed it?—A. Yes, sir.

Q. Did the other inspectors of that election sign the certificate, Exhibit 3, at the same time, or approximately the same time, you did?—A. Yes, sir.

Q. Who filled in those certificates, so far as the same are filled in with ink, if you know?—A. Mr. Knapp.

Q. When you made that certificate there were a number of the votes that were cast at that election that you hadn't looked over at all; isn't that so?

Mr. MAYNARD. We object to that as immaterial; he can't stultify his own written return in this way.

Mr. FELLOWS. I don't suppose the law contemplates that every inspector shall see every ballot.

A. I did not see all of them.

Q. Do you know how many ballots were counted at the time you retired at 12 o'clock on the night of November 5, up to that time?—A. I presume about half.

Q. When you got back at 5 o'clock the next morning, how many were there left to count?—A. From 15 to 25.

Q. I show you Exhibit 13. State how many ballots there were cast at that election that day, on November 5, 1912.—A. There were 370.

Q. Approximately, then, at least 160 ballots that had been voted at that election on November 5, 1912, were counted at a time or times when you were not present?—A. Yes, sir.

Q. And when you made your certificate attached to the exhibits which have been read while you have been testifying, about 160 of the ballots that were voted at that election had not been examined or counted by you. Is that correct?—A. I was asleep when they counted them.

Q. You didn't count them at any time before making that certificate?—A. No, sir.

Q. After you got there at 5 o'clock, you stated that Mr. Hager left there.—A. Mr. Bacon.

Q. And you finished the count in his absence?—A. Yes, sir.

Q. Do you know whether he counted the ballots that had been voted at that election that were counted by you and the others after Mr. Bacon left on the morning of the 6th, before these certificates and these returns were signed by Mr. Bacon?—A. I don't know.

Q. At any time while that count was going on when you were there, do you know whether Dennis A. Hager, one of the inspectors of that election, was absent any?—A. I couldn't say.

Q. Were the ballot boxes that were used at the election of November 5, 1912, as far as you know, in the office of Mr. Bacon on the morning of November 6, 1912, when you signed these certificates?

Mr. MAYNARD. We object to that as immaterial.

A. No; they were not there.

Q. Where were the statement books, or where was the statement book, as the case may have been, filled in with the writing that is in it?—A. Mr. Knapp may have filled them in at his own home, or at Mr. Bacon's office before I arrived there. They were all filled in when they telephoned me to come over to the office and sign up the returns. They were all ready when I got there.

Q. Were they filled in before your board adjourned at 6 o'clock on the morning of the 6th?—A. No, sir.

Q. Was the poll book, save the certificate of the inspectors at the time that you adjourned on the morning of November 6, 1912, at the place where the election was held on the 5th?—A. The poll books?

Q. Yes; that is, filled in with the writing that is in them aside from the list of voters?—A. The list of voters was filled in.

Q. I say aside from that.—A. I don't think so.

Q. Did you sign more than one poll book at the office of Mr. Bacon on the morning of the 6th of November, 1912? Sign a certificate for more than one book?—A. I couldn't tell unless I saw them.

(Book handed witness.)

WITNESS. That is my signature.

Q. Did you sign a like certificate on any poll book, such as Exhibit 13, prior to and including the time you took that adjournment, about 6 o'clock, November 6?—A. No; I didn't sign any previous to that.

Q. When you got over to Mr. Bacon's office did you or not sign the certificates to two poll books of the election held in Sunfield on November 5, 1912?—A. I signed everything in Mr. Bacon's office. I didn't sign it anywhere else. Were there two signed?

Q. I don't know; there ought to be. A. You can tell if you have your book whether I signed it or not.

Cross-examination by Mr. FRANKHAUSER:

Q. You had been election inspector at a good many previous elections?—A. Yes, sir.

Q. You are supervisor of the township of Sunfield and have been for some time?—A. Yes, sir.

Q. Your township is normally quite strongly Republican?

Mr. ADAMS. I object to that as irrelevant and immaterial and too indefinite.

A. It is considered so.

Q. Even at the last election it went Republican?

Mr. ADAMS. We object to that as irrelevant and immaterial and not the best evidence.

A. I think the report shows it went Republican.

Q. Do you remember how many votes Mr. Carney received there?

Mr. ADAMS. We object to that as irrelevant and immaterial and not the best evidence.

A. I do not; no, sir.

Q. Now, as a member of that board— you have been elected supervisor on the Democratic ticket in that township? A. Yes, sir.

Q. Every time for a number of years?—A. Yes, sir.

Q. Now, this inspector, Mr. Bacon, was a Democrat? A. Yes, sir.

Q. He died very soon after the election?—A. Yes, sir.

Q. The fact was he was in rather poor health at that time? A. Yes, sir.

Q. That is why you proposed he should go home and you would take his place?—A. Yes, sir.

Q. Mr. Sayre—is he also a Democrat? A. I think so.

Q. And supported the Democrat ticket?—A. I think he is a Democrat.

Q. Mr. Bacon was a Democrat and supported the Democrat ticket?—A. I don't know how they voted.

Q. Just what you know from your observation among men?—A. He was a Democrat.

Q. A majority of the board of inspectors were Democrats?—A. Yes, sir.

Q. Mr. Mapes—he was what is called a third party man, a Bull Mooser?—A. I think so.

Q. As far as you were concerned, Mr. Palmer, your actions there were in every regard in favor of an honest election?—A. Yes, sir.

Q. I ask you whether Mr. Carney got credit for every vote that was cast for him, as far as you know?

Mr. ADAMS. I object to that as irrelevant and immaterial.

A. As far as I know, he did.

Q. And John M. C. Smith got credit for what was cast for him, as far as you know?—A. Yes, sir.

Q. As far as you know, there was nothing occurred there that affected the result of the election for Member of Congress?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. No, sir.

Q. Did you swear in Mr. Sayre because you supposed you had a right to swear in such an officer?

Mr. ADAMS. I object to that as irrelevant and immaterial.

A. Yes, sir.

Q. You had done that at previous elections?

Mr. ADAMS. We object to that as incompetent and immaterial.

A. Yes, sir.

Q. And you did it to facilitate and help the election along; that was your intent and purpose?

Mr. ADAMS. We object to that as irrelevant and immaterial.

A. Yes, sir.

Q. When you adjourned at 12 o'clock—first I will ask you, Mr. Sayre was in the same room with all of you there?—A. Yes, sir.

Q. The election was all in one room?—A. Yes, sir.

Q. He was in sight there, at least of the clerks, wasn't he; one or more of them?—A. The booths stood between the clerks and Mr. Sayre.

Q. Was Mr. Sayre in such a situation that the clerks could not see him, or any of the inspectors?—A. They could not see him.

Q. The clerks could not?—A. No, sir.

Q. Nor the inspectors?—A. No, sir.

Q. It was all in one room, anyway?—A. Yes, sir.

Q. Was it a large size or small size room?—A. It was a large room.

Q. There would be no difficulty in hearing anything that was said by each other in the room there?

Mr. ADAMS. I object to that as calling for the conclusion of the witness and incompetent.

A. If they talked loud enough they could hear each other.

Q. Nobody voted there, as far as you know, except legal electors of the township?—A. No, sir.

Q. You know all the voters there, don't you?—A. Yes, sir.

Q. You have lived in that township some years?—A. Twenty-three years.

Q. When you adjourned at 12 o'clock it was because you gentlemen had got pretty tired counting votes?—A. Yes, sir.

Q. I will ask you whether this was not a peculiar election; different than any you had ever taken part in as to the number of split ballots?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

A. It was about the time we used to have under the old Australian ballot.

Q. Was not this election—is it not a matter of common knowledge that this election had more splits and took longer to count than any election we have had for years?

Mr. ADAMS. The same objection.

A. More than usual.

Q. Did you ever before adjourn before you completed the count?

Mr. ADAMS. We object to that as irrelevant and immaterial.

A. I think not.

Q. You adjourned, as you say, at midnight, and the ballots were left there in that voting place, were they—you left them with the clerks?—A. Yes, sir.

Q. Was the building locked when you went out, or did you go out first?—A. I think I went out first.

Q. You don't know, then, whether it was locked or not?—A. I do not.

Q. When you had the noon adjournment one of the clerks was left there in charge of the ballot box?—A. Mr. Sayre was left there and one of the outside gatekeepers.

Q. He was left there while the board went to dinner?—A. Yes, sir.

Q. When it came supper time, the boys had their supper sent to them and you went out and got your supper?—A. Yes, sir.

Q. When you got back you found them counting?—A. Yes, sir.

Q. You were engaged in counting them before you quit at that time, that is, before you went to Bacon's office everything was counted; you got back at 5 o'clock, then the count was completed before leaving the building?—A. Yes, sir.

Q. And put down on the books or the tally?—A. Yes, sir.

Q. Then it was suggested that you go to Bacon's office and sign up the returns?—A. Yes, sir.

Q. But all the votes had been counted at that time?—A. Yes, sir.

Q. They were on the tally sheet.—A. Yes, sir.

Q. The clerks took all the books and statements. Do you know what they took to Bacon's office?—A. They took all we needed at the time.

Q. When you got there everything was there and the people in there ready to sign?—A. Yes, sir.

Q. Now, then, before midnight you took a chair and went off in one corner and went asleep? You said you did go to sleep, didn't you?—A. No, sir.

Q. You didn't do that?—A. No, sir.

Q. You went off and sat down and quit counting and said there was no use of counting and working right along; then you started out, or that in substance?—A. I didn't make that statement; that is what the postmaster said.

Q. What did you say?—A. Mr. Mapes made a motion to adjourn at midnight, and I said I was willing to adjourn to rest if the rest were; that is what Bera said, that I went asleep.

Q. The question is whether you quit work and went away and sat down in another part of the room?—A. No, sir.

Q. Off in a corner on a bench over there?—A. No, sir.

Q. You worked right along until they adjourned?—A. We had two men. I said that it didn't require Mr. Hager and I both constantly, and Mr. Hager and I did the work alternately.

Q. What did you do alternately?—A. We deposited ballots in the box during the day.

Q. I mean as to the counting?—A. Mr. Bacon called off when he took a ticket—he called off each candidate's vote as he came down through, and I would watch over his shoulder to see whether he called off correctly, and when I stepped to one side Mr. Hager would do that; when Mr. Bacon would get tired I would sit down and call off and Mr. Hager would look over my shoulder.

Q. There were two inspectors examining the count as you went along?—A. Yes, sir.

Q. Where is Mr. Sayre? He has gone away.—A. Yes, sir.

Q. Where is he?—A. In Florida.

Q. Do you know when he is coming back?—A. I expect him back any time this month.

Q. During the cold weather? When you went to breakfast, at 7 o'clock, the count had all been completed?—A. Yes, sir.

Q. All you had to do after that was to make and sign the returns?—A. Yes, sir.

Q. Which you did about 9 o'clock in Justice Bacon's office?—A. Yes, sir.

Q. After you got through counting, the ballots were tied up with strings around them and put back in the ballot boxes?—A. That is my recollection of it.

Q. And you left them to the clerks after that?—A. I couldn't say as to that.

Q. That was left with the clerks to do?—A. Yes, sir.

Q. Mr. Sayre and Mr. Bera were there to assist in the tally, they didn't count any ballots?—A. No, sir.

Q. Were you sworn at the beginning, all sworn in together?—A. Yes, sir.

Q. Before you signed the oath and before you signed the book there?—

A. We were sworn in before we opened the polls in the morning.

Q. When you started in here, you said you thought Mr. Bacon was not sworn; what do you think about it? Do you think you were all sworn?—A. I don't remember about Mr. Bacon; he might have been—I don't remember.

Q. Mr. Bera, the postmaster, was a deputy township clerk at that time?—A. That is what he said.

Q. Do you know whether he was or not?—A. I don't know; I think he was.

Mr. ADAMS. I move to strike out what he thinks, and also object to it and move to strike it out for the further reason that there is better evidence.

Q. Has he acted as deputy clerk to your knowledge?—A. Not to my knowledge.

Q. Your understanding is that he is deputy township clerk?

Mr. ADAMS. I object to that as irrelevant, incompetent, and immaterial.

A. I never heard of his being deputy county clerk or township clerk until he told me that that day at the polls.

Q. Were duplicate tally sheets kept the whole day?—A. Yes, sir.

Q. By the two clerks?—A. Yes, sir.

Q. The returns were mailed to the county clerk and judge of probate—duplicate copies?—A. Yes, sir.

Q. Who mailed them, do you know?—A. I suppose so——

Q. The question calls for your knowledge.

The WITNESS. I don't know of my own knowledge.

Q. Who do you understand mailed them?

Mr. ADAMS. I object to what his understanding was as incompetent, irrelevant, and immaterial and hearsay.

Q. What do you know about their being mailed?—A. My understanding was that one of the clerks mailed them.

Mr. ADAMS. I move that be stricken out as incompetent, irrelevant, immaterial, and hearsay.

Q. Was one of the poll books put in the ballot box when you got through?—A. I couldn't tell you.

Q. Were the duplicate returns that were made at that time in the office of Mr. Bacon?—A. Yes, sir.

Q. The duplicate tally sheets kept during the day?—A. Yes, sir.

Redirect examination by Mr. ADAMS:

Q. What was the politics of Mr. Knapp at the time he acted on the board, if you know?—A. He was a Republican.

Q. E. W. Knapp?—A. Yes, sir.

Q. This room in which the election was held that day was a part of the room that was used by the fire department?—A. Yes, sir.

Q. How large was the entire room in which this election was held?—A. I think about 20 by 30.

Q. Was there on that day, November 5, 1912, any fire apparatus in there?—A. Yes, sir.

Q. What?—A. I think the engine, the hose wagon, and hose cart.

Q. Your election board in the conduct of that election there occupied a part of that general room for the purposes of this election?—A. Yes, sir.

Q. Was the part that you occupied for holding that election that day in any way partitioned off from the general room?—A. By a railing.

Q. What kind of a railing?—A. A wooden railing about 3 feet high.

Q. How big was the railing; what was the railing made of; the size of the material it was made of?—A. The standards up and down were about 1 inch in diameter and the top was probably 3 inches.

Q. Was there any way by which the part your board occupied for holding that election could be locked so that nobody could get in there when the board was absent?—A. No, sir.

Q. People could, I suppose, go under the railing or step over it, could they not?—A. They could not get under it because there were standards up and down; they could step over it if they wanted to, I suppose.

Q. The members of the fire department occupied that room that day?—A. They didn't occupy it that day.

Q. Was there more than one door to the room?—A. Two doors, three doors, four doors.

Q. Four doors that entered that room in which this election was held?—A. Yes, sir.

Q. Do you know whether any one or ones of the election board had the keys to each and every door that entered that voting place that day?—A. I couldn't tell you.

Q. When you left there at night, 12 o'clock, took that adjournment, were there any members of the fire department in the room?—A. Not that I know of.

Q. Did any members of that fire department stay in that room during the hours of the day named?—A. No, sir.

SYLVESTER FRANKS, being first sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Franks, where do you reside?—A. I reside in Sunfield.

Q. In the county of Eaton?—A. Yes, sir.

Q. Were you residing there on the 5th day of November, 1912, election then?—A. Yes, sir.

Q. Your age is what?—A. I will soon be 60, the 6th of March.

Q. Did you hold any official position in the township of Sunfield on the 5th day of November, 1912?—A. In regard to the election, I did not.

Q. I don't mean that, but were you a township officer?—A. Yes, sir; I was marshal.

Q. You were marshal of the village of Sunfield?—A. Yes, sir.

Q. On that day?—A. Yes, sir.

Q. How long prior to that day were you or had you been serving as town marshal?—A. It will be three years the 1st of April.

Q. Were you performing your duties in and around the village on the 5th day of November, 1912?—A. Yes, sir.

Q. Were you about in the vicinity of the voting place in that village on that day?—A. Yes, sir.

Q. Did you vote there that day?—A. Yes, sir.

Q. Were you or not performing your duties on the night of the 5th day of November, 1912, as marshal?—A. Yes, sir; I was.

Q. Did you see any of those who you understood to be members of the election board around the town of Sunfield after 12 o'clock, November 5, 1912—12 o'clock at night?—A. Well, now, I couldn't tell you exactly to just the hour, but it was somewhere about that time that I saw two of them.

Q. Who did you see?—A. I saw Mr. Mapes and Mr. Hager.

Q. Where did you see them?—A. They came into the barber shop where we were getting the election returns.

Q. Whose barber shop was that?—A. Thomas & Dunn's.

Q. How far from the place where the election was held on the 5th day of November, 1912, was this barber shop?—A. Well, now, I should judge about 25 rods, maybe a little more or a little less than that; I think between 25 and 30 rods.

Q. Were you in the barber shop?—A. Yes, sir.

Q. Were you in there before these gentlemen came in?—A. Yes, sir.

Q. I mean that night?—A. Yes, sir.

Q. They were getting the election returns, you say, at the barber shop?—A. Yes, sir.

Q. Who did you see come in there?—A. Herman Mapes and Mr. Hager.

Q. Did you see Mr. Knapp there?—A. No, sir; I did not.

Q. In the barber shop?—A. No.

Q. State whether you had seen this same Mr. Mapes and the same Mr. Hager acting on the election board there at the voting place in Sunfield on the 5th day of November, 1912.—A. I had, sir.

Q. Did you have any talk with either of these two members of that board that night in the barber shop?—A. I did not personally, but I was there.

Q. Did you hear them say anything?—A. I heard Mr. Mapes say he had adjourned.

Mr. FELLOWS. I object to that as hearsay.

Q. What did Mr. Mapes say?—A. He said they had adjourned until morning.

Q. Did you say anything to him?—A. I spoke up and says, "I don't think you have any right to do that."

Q. What did he say in reply to what you said?

Mr. FELLOWS. We object to that as immaterial.

A. I don't think he said anything back to what I asked him or to what I said.

Q. Did you go to the place where the election had been held the 5th day of November, 1912, after you met Mr. Mapes and Mr. Hager in the barber shop?—A. I did.

Q. What time did you get back to the voting place?—A. I think it was between 12 and 1, some time.

Q. Was that before or after you saw Mr. Mapes and Mr. Hager in the barber shop?—A. That was after.

Q. What was going on down there to the voting place when you got back after having seen these men in the barber shop?—A. They were commencing to count the votes again.

Q. Who was doing that?—A. Mr. Knapp was there and Mr. Mapes, Mr. Hager, and Mr. Pacon.

Q. Any others?—A. No, sir; not that I remember.

Q. Did you go down from the barber shop when they went down—that is, when Mr. Mapes and Mr. Hager went down to the voting place?—A. No, sir.

Q. How long did you stay there after you went to that voting place, after you left that barber shop that night?—A. I don't think I stayed over 10 minutes.

Q. Did you go back to that voting place again that night?—A. No, sir.

Q. Did you go back there the next morning, on the 6th?—A. No, sir; I did not.

Q. Did you have a key to the room in which the election was held on the 5th day of November, 1912?—A. I have a key to that part.

Q. Did you have a key that day, that night, to that room?—A. I have a key to that at all times that I carry.

Q. Did you have at that time?—A. Yes, sir.

Q. That election was carried on in the engine room?—A. Yes, sir.

Q. Of the fire department?—A. Yes, sir.

Q. Were there any other keys around anywhere that you know of?—A. Yes, sir.

Q. Was there one of these keys usually kept there?—A. Yes, sir.

Q. Where?—A. It was kept right in a little tin box by the side of the small door that goes into that same part.

Q. So if a fire occurs anybody can go to that little tin box and get the key and open the door and go into this room?—A. Yes, sir.

Q. Was the tin box kept locked?—A. No, sir.

Q. No lock on the tin box?—A. No, sir.

Cross-examination by Mr. MAYNARD:

Q. You had a key with you that night?—A. I had the key I always carry myself.

Q. You had it that night?—A. Yes, sir.

Q. Did you go and unlock the door when no one was there?—A. Not that night, I didn't.

Q. You didn't let anybody else take your key, did you?—A. Not the key I had.

Q. You know of no one who used that key to open that door that night?—

A. Not the key I carried, they didn't, because I always have that myself.

Q. When you got back to the engine house, after you left the barber shop, you say you saw Mr. Knapp and Mr. Mapes; what were they doing?—A. Mr. Knapp and Mr. Mapes were tallying.

Q. Keeping the tally?—A. Yes, sir.

Q. Mr. Hager, one of the inspectors of election, and Mr. Bacon—they were there counting the ballots?—A. They were there.

Q. That is what they were doing?—A. Yes, sir.

Q. They were engaged in that business when you went in?—A. Yes, sir.

Q. How long did you stay there?—A. I think I was there about 10 minutes.

Q. They were engaged in that business when you left?—A. Yes, sir.

Q. You say you saw Mr. Mapes; what office did he hold?—A. He was one of the men that tallied.

Q. Was he township clerk?—A. I think he is, but I will not be really positive.

Q. And Mr. Hager was on the street?—A. I didn't see him on the street; understand me, I was in the barber shop; I didn't see them on the street at all.

Q. You don't know where Mr. Bacon and Mr. Knapp were at that time?—A. No, sir.

Q. Was that after midnight?—A. I think when I saw them I don't think it was. It was somewhere about 12 o'clock; I will not be positive about that.

Q. Do you think a little after midnight?—A. I would not say positively.

Q. You don't know?—A. It was somewhere right about that.

Q. They didn't remain in the barber shop long?—A. I should judge about half an hour.

Q. Then they went back?—A. They went somewhere.

Q. You saw them back there, didn't you?—A. Yes, sir.

Q. You followed them right up?—A. I didn't follow them right up.

Q. How quickly?—A. I don't know.

Q. Ten minutes?—A. I will not say about that.

Q. You don't know?—A. I don't just remember how long it was, but I went over there—me and Charlie Lanquest—to the depot, and there we got the returns on the President and governor.

Q. Then you went back up there?—A. Yes, sir; I went down to the town hall.

Q. And you found them to work?—A. Yes, sir.

Q. You don't know of anyone else opening that place while they were absent, do you?—A. I don't know; they would have to have a key to get in; I didn't let them in there.

Q. You don't know of anyone going in there?—A. No, sir; I do not.

Q. You didn't see anybody go in there?—A. No, sir.

ROSSLYN L. SOWERS, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Where do you live?—A. City of Charlotte.

Q. How long have you lived here?—A. About 14 years.

Q. Were you living here on the 5th day of November, 1912, and for several weeks immediately following that?—A. I was.

Q. You are an attorney by profession?—A. Yes, sir.

Q. Your age?—A. I am 42.

Q. Did you have any occasion to or did you visit the office of the clerk of the county of Eaton within a day or two after the 5th of November, 1912?—A. I did.

Q. In reference to the election returns, when did you, if at all, visit the clerk's office of Eaton County next following that election?—A. Well, I think I was in there the day following the election; I was also in there the day following that. I recall one particular instance.

Q. What occurred when you were in the clerk's office on the 7th day of November, 1912?—A. I went in there in company on that occasion in the afternoon with Mr. Towne and Johnson.

Q. What Towne?—A. Frank Towne and Frank Johnson, to look over the votes that I learned were there from the various precincts, or a portion of them.

Q. What office are you speaking of?—A. The county clerk's. On the 7th of November we went over the books that were there on that occasion—the statement book and tally sheets, or a portion of them. We went over the books

there—the statement book and tally sheets. If the statement books were there, we went over the statement books; and where the statement books were absent we looked over the tally sheets.

Q. Were those statement books and tally sheets when you examined them on that day contained in envelopes or not?—A. No, sir; they were not in the original envelopes in which they were forwarded to that office.

Q. Were there any returns from any precinct or any precincts of the county of Eaton missing at that time?—A. The statement books of some of the townships were not there; also the returns from certain townships at that time hadn't—the statement books from some of the townships were not there.

Q. Do you remember what townships the statement books were not there?—A. I couldn't say exactly; there were two or three of them, at least.

Q. Were there either tally sheets or statement books from every precinct in the county of Eaton there in that office at that time?—A. I think there were, or they came in during the time we were there.

Q. Do I understand you to say that you looked those statement books over and the tally sheets at that time?—A. Yes, sir.

Q. Did anybody assist you in doing that?—A. Mr. Towne and Mr. Johnson and myself were engaged in that; I read off the list from the books that were there and Mr. Johnson and Mr. Towne each took down the figures so far as particular ones, particular candidates, had been voted for. I think then Mr. Towne and Mr. Johnson personally looked over the principal ones and verified the figures.

Q. Were there any others in the office at that time?—A. There were quite a number, several people—John C. Nichols, Ernest Pray was there, and John Davis, of Battle Creek, was there, a justice of the peace in Battle Creek. There were several other people that I do not recall; I didn't notice them all. John M. C. Smith's daughter was in there.

Q. A daughter of Congressman Smith?—A. Yes, sir.

Q. What time of day did you go in there on the 7th?—A. I should say somewhere between 2 and 3 o'clock, just exactly the time I could not say; it might have been a little later.

Q. Where did you find the statement book when you went in?—A. There were a portion of them on the desk at which Mr. Nichols was sitting, the clerk's desk, about the middle of the office.

Q. Was that in the public office?—A. Yes, sir.

Q. Of the county clerk?—A. Yes, sir. We took those and carried them across to the north side of the desk or table on the north side of the room; while Mr. Johnson sat at that table I was standing up, going over the books. All of them were not there at that time, but afterwards we got them from the office, private office of the county clerk—those we hadn't at first gotten.

Q. Is the John C. Nichols you mention the same John C. Nichols who was a candidate for circuit court commissioner on the Republican ticket at the November 5, 1912, election, in this county?—A. Yes, sir.

Q. Did you have any talk with Mr. Nichols at that time?—A. Yes, sir; I had a conversation with him when I first went in; there were several of us who were engaged in that conversation—Mr. Towne and Mr. Johnson and Mr. Nichols and myself, and several others were engaged in the conversation; it was not between any one person and Mr. Nichols particularly, but Mr. Nichols was talking to the three of us rather.

Q. What talk did you have with him?

Mr. FELLOWS. That is immaterial.

A. I told him we would like to look over the books, or asked him if those were the books, and he said they were. We told him we would like to look over the books and see the result on certain officers or certain candidates that had been voted for. He says, "I have them already tabulated," and gave us the totals according to his tabulation.

Q. What totals did he give you?—A. 1,027 on Congressman, was what we were particularly interested in and inquired about.

Q. 1,027 what?—A. 1,027 plurality on Congressman Smith in this county over the highest competitor. We suggested to him that we would prefer to go over the books ourselves and make our own tabulations, and we did.

Q. Did he say anything about the necessity of going over those?—A. He said he had gone over it and made these figures from the books to avoid the necessity of going over them, if we wanted to take his figures.

Q. Did you go over those books yourself?—A. Yes, sir.

Q. What did you find from your investigation different in the footings between Congressman Smith's and Carney's vote for Representative in Congress?—A. We found it to be 912 in favor of Congressman Smith.

Q. Mr. Davis, you said, was in there?—A. John Davis, of Battle Creek; yes, sir.

Q. Do you know whether Mr. Davis was interested in the political campaign?—A. Nothing only what statement he made to me.

Q. What did he say?

Mr. MAYNARD. We object to that as incompetent and immaterial.

A. He said he was one of the committeemen from Battle Creek.

Q. What committeemen?—A. Congressional committeemen from Battle Creek.

Q. Now, did you see, when you were in there at that time, any of the envelopes in which the election returns supposedly had come into the clerk's office?—A. Yes, sir; I saw the envelopes there. If I said that none of these books were in the envelopes, I will say that some of them might have been in there; we took them out in going over them.

Q. Did you find any of these envelopes sealed when you were in there?—A. No, sir; not in that office.

Q. When you determined the difference in the vote between Congressman Smith and Mr. Carney for the office of Representative in Congress to be 912 on said occasion you have testified about, did you have any talk with Mr. Davis there in the clerk's office about that figure?—A. Yes, sir; not particularly as to that. I don't recollect talking with him about that; it was more about the majority—how it stood, rather. I don't recollect any particular conversation with Mr. Davis at that time about that particular figure.

Q. After you had looked these figures over and found the difference was 912 between those two candidates, what, if anything, did Mr. Davis say there about the difference being greater than 912; if so, what did he claim instead of that?

Mr. MAYNARD. Objected to as incompetent, irrelevant, and immaterial.

A. I don't recollect, but I could not undertake to state what the conversation was exactly. I recollect there was some conversation.

Q. Who brought out from the private office the returns which you did not get that day in the clerk's office in the first instance?—A. I would not be able to state that; they were brought out on our suggestion that they were not all there.

Q. Do you know who was in the private office where the balance of those returns were from which they came to you that day?—A. Well, Mr. Davis had been going over some of the books in there.

Q. In the private office? Did you see a door between them?—A. Yes, sir.

Q. Do you know of any one else having been in that private office at that time?—A. I do not.

Q. Did you have any conversation with John C. Nichols there in the clerk's office about these election returns, the manner in which they had been handled, or anything of that kind; if so, what was it?—A. I suggested to Mr. Nichols that I knew of no authority in law for the books to be opened up and the seals broken. I protested, or suggested to him rather, that I didn't think they had any such authority.

Q. Did he make any remark to that?—A. It had been done, he said.

Mr. MAYNARD. I object to that as incompetent and immaterial.

WITNESS. At that time he told me it had been done, they had done it before, and he thought he had a right to.

Q. Who was in charge of the clerk's office at that time, claiming to be in charge of it? Actually in charge of it—I will put it that way?—A. I suppose that Mr. Pray was, from some conversation I had.

Mr. MAYNARD. I object to what his opinion or presumption is or what he supposes as incompetent and immaterial.

Q. What do you mean by that?—A. During the time we were there in the office Mr. Pray was answering a telephone call—

Mr. MAYNARD. We object to that as incompetent, immaterial, and hearsay.

A. (Continuing.) And he reported, Mr. Pray did, to Mr. Nichols and those who were present the result by precincts of the vote on Congressman from Hillsdale County. In answer to a question over the phone—I don't know what the question was—he says, "You are talking to Earnest Pray, county clerk of Eaton County. You will meet me in Lansing after January 1, at the house of representatives. I would be pleased to meet you." I don't know what the ques-

tion was. Mr. Pray was elected on the Republican ticket as representative from this county.

Q. Was John C. Nichols in the room at the time Mr. Pray made that statement?—A. He sat at the desk taking down the figures, not 2 feet from Mr. Pray. Mr. Pray was standing at the edge of the desk, the receiver of the telephone on the desk to a cord. John C. Nichols was at that desk taking the figures down as Mr. Pray read them off.

Q. Mr. Pray was using the telephone?—A. Yes, sir.

Q. Did Mr. Pray announce those figures as he got them through the telephone?—A. He announced them precinct by precinct over the telephone; reported them, and they were taken down.

Cross-examination by Mr. MAYNARD:

Q. Mr. Sowers, you are a practicing attorney in this county?—A. Yes, sir.

Q. You speak of the private office in the clerk's office. Was one room more public than the other?—A. There is a public office and a door between them; I don't know whether you would call it a private office or public office; I know the attorneys and people generally have access to that office if they care to go into it.

Q. The attorneys go through into the vault, if they want to, where the records of the court are kept?—A. Yes, sir.

Q. If you go into the office and you find the deputy clerk in the front office, and you want to see the clerk, you go through without any announcement into the other office?—A. Yes, sir; one is rather an outer office, and the other an inner office.

Q. The inner has an outer door the same as the other?—A. Yes, sir; I would not call it private, yet there is more privacy to that office than the other, being the inner office.

Q. The typewriting machine is in the back office?—A. In the second office; in the second room; that is where they do their work.

Q. The first office you go into is the one in the northeast corner?—A. Yes, sir.

Q. There is a door between the office you refer to as the private office, to the west of it?—A. To the west of it; yes, sir.

Q. The corridor runs along at the south of both of these rooms?—A. Yes, sir.

Q. There are doors opening from both of these offices into that corridor?—A. Yes, sir.

Q. There is no sign or painting anywhere to show you that one is called a private office and the other a public office?—A. I am not certain whether on that inner office there is a door with glass in it that has "Private" on it or not.

Q. You never saw it?—A. It seems to linger in my memory there is, but I will not say without going down and looking at it.

Q. Don't you know that a good deal of the time that door opening from the west room into the corridor stands open?—A. Yes, sir.

Q. And the public generally go into the one as well as the other?—A. I have gone through there, and I have observed other people going through.

Q. There is a drinking fountain right near the door of the west office?—A. Yes, sir; to the right of it some few feet.

Q. People can go from that drinking fountain into either office?—A. Yes, sir.

Q. Did you see Mr. Davis in that west room taking figures?—A. No, sir; I saw Mr. Davis in the other room.

Q. That is when you say he had been in there taking figures?—A. If I answered you in that way, I say I saw Mr. Davis in that room, and those books were in there or a portion of them were in there.

Q. Do you know from what precinct?—A. No, sir; I can't remember that.

Q. There was nothing to prevent anyone going into either room to examine those books at any time?—A. Not that I know of.

Q. They were open to the public?—A. They seemed to be.

Q. When part was in one room and others might be examining them, and part in the other room?—A. Yes, sir.

Q. Part of them were on the table in the southeast corner of the front office, and you went and examined them there?—A. About 6 or 8 feet from the clerk's desk.

Q. Did you examine all those books at that time?—A. I went through those books, every one of them.

Q. With reference to what office?—A. We tabulated the vote on Congressmen.

Q. Any other?—A. I don't think so at that time.

Q. You were there in the interest of Mr. Carney?—A. I was requested to go over and take those figures down; there seemed to be some question on Congressmen.

Q. You were there looking up those figures?—A. We were looking up those figures.

Q. You examined all those books?—A. Not at the request of Mr. Carney; I will not say that. You asked me whether I was there at his request; I was looking up the records.

Q. In Mr. Carney's interest?—A. Call it what you have a mind to.

Q. You examined all those books?—A. Yes, sir.

Q. You didn't see any evidence of an alteration on those books in that office?—A. I think I saw there some evidence on a book, of it having been scratched out and the figures rewritten; I will not say an alteration or what it was.

Q. Can you tell whether an alteration or an erasure?—A. I could see it was an erasure; I can't say whether an alteration or not.

Q. Of a figure?—A. Figures or words.

Q. Was it words?—A. I will not say positive which it was.

Q. Which township was it?—A. I couldn't say now.

Q. Can you pick out the book now?—A. I can pick out the book and show you.

Q. All right; pick it out. Did you examine more than one such place?—A. I would not be positive that I did.

Q. Do you remember of more than one?—A. Well, I don't say that I saw more than the one. I saw some places where—I don't know whether more than that; I will not say.

Q. Did you compare that with the tally sheet?—A. No, sir; I did not make a comparison with the tally sheet.

Q. You don't know whether it agreed with the tally sheet or not?—A. No, sir.

Q. Did you have any tally sheets at all?—A. I examined the tally sheets where we didn't get the statement book. This don't seem to be the statement books of all the townships; for instance, Charlotte, fourth ward. I am looking for the statement book. Have you the statement books separately there?

Q. Just a minute. Is this one of the books you referred to?—A. I observe there is one book from the third ward of Eaton Rapids; I am not positive whether that is one of them or not.

Q. Will you state on the record here whether there is any sign of an alteration or change in this where the number of votes are written out in full?—A. I don't observe any change in the words.

Q. Is there any sort of an interlineation or alteration or erasure on the paper where it is written?—A. No, sir.

Q. But you observe the figures where they made them are blotted?—A. I observe that some of them had been and some erasures of some figures; evidently 49 was the result.

Q. But not where it was written?—A. No, sir; but the figures.

Q. The figures evidently were made incorrect in the first place and then made over?—A. Yes, sir.

Q. But where it was written out there was no change?—A. I don't recollect of any change.

Q. I just want that on the record. You found no evidence of any change?—A. No, sir; not on that book of any change; the figures and words didn't always agree, however. I do not find but a couple of the statement books here. [More books handed witness.] Aside from the one referred to, I don't see any here at the present time.

Q. What precinct is that?—A. Roxand, I think; I am not certain as to that; sometimes you pick a book up where there seems to be an erasure in the figures, but the figures agree with the words. It was Eaton Rapids; that is the only one I see now.

Q. First come the candidates' names?—A. Yes, sir.

Q. "Whole number of votes given for the office of Representative in Congress" is how many, written out?—A. Two hundred and five.

Q. In the first column the candidates' names appear?—A. Yes, sir.

Q. What is the next?—A. Then the words "Vote received."

Q. Written afterwards out at length?—A. Yes, sir.

Q. After the name John M. C. Smith, do you see 81?—A. Yes, sir.

Q. Is that written in a plain, legible hand—the 81?—A. Yes, sir.

Q. There are no alterations or erasures of the paper at all?—A. No, sir.

Q. It is fair on the face?—A. Yes, sir.

Q. For Carney, written in full?—A. Seventy.

Q. In plain handwriting?—A. Yes, sir.

Q. Following the 81 figures, it is written?—A. Yes, sir.

Q. The same?—A. Yes, sir.

Q. It has been 81, only the figures are blotted, and they have written over the same figures?—A. Yes, sir.

Q. That agrees with the written words?—A. Yes, sir.

Q. In the word "seventy" the word is written full, and afterwards it seems to have been changed from 75 to 70?—A. The figures are blotted.

Q. It looks as though changed from 75 to 70 to agree with the words?—A. Yes, sir; looks as though it might.

Q. Did you look at the tally sheet of that ward?—A. I did not.

Q. You didn't have any doubt about these figures standing for the same as the words written before them?—A. I don't know that I stopped to consider that.

Q. Well, consider it right now.—A. I have no doubt but what these figures now agree with the words.

Q. This is as it stood when you took those books and figured up the figures that day when you were in the clerk's office?—A. I will not swear these figures are the same now as then; I have not the correct figures in my mind.

Q. You know these words have not been altered?—A. No, sir; they have not been altered.

Redirect examination by Mr. ADAMS:

Q. There is another one there is a little change in [handing witness book].—A. Yes, sir; the third ward of Eaton Rapids, the one referred to.

F. B. JOHNSON, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Johnson, where do you reside?—A. In Charlotte.

Q. How long have you lived here?—A. About two years and a half.

Q. Did you live here on the 5th day of November last year?—A. Yes, sir.

Q. What is your age?—A. I am 60.

Q. Did you take any part at the fourth ward election in the city of Charlotte, in the county of Eaton, on election day, November 5, 1912?—A. I acted as challenger there for the Democrats by request.

Q. What time did you go to the voting place on that day in that ward?—A. I got there just a few minutes after the rest of the officers were sworn in.

Q. About what time did you get there?—A. About 10 or 15 minutes after 7 o'clock in the morning.

Q. Did you stay there until 5 o'clock that night?—A. Almost continuously.

Q. Were you away to your dinner at noon?—A. Yes, sir; I stepped out to a restaurant and had a bite.

Q. You acted as challenger for the Democratic Party in that precinct?—A. Yes, sir.

Q. Did you challenge the vote of anybody there that day?—A. I did one; yes, sir.

Q. What time in the day did you do that?—A. I think it was about 11 o'clock.

Q. Did the party vote whose vote you challenged?—A. No, sir.

Q. Did anything occur after that challenge there in connection with the election or any member of the election board with reference to the challenge you had made that you recollect now?—A. Some remark was made about me having challenged a Democrat.

Q. Who made that remark?—A. Mr. Greenman.

Q. What is his first name?—A. The alderman of that ward, James Greenman.

Q. Was he acting on the election board that day?—A. Yes, sir.

Q. He was what—what officer, inspector?—A. One of the inspectors; yes, sir.

Q. Who were the other inspectors there that day?—A. Mr. Pope, another alderman in that ward; Mr. Porter deposited the ballots in the ballot box.

Mr. ADAMS. I have had the poll book for the election held on the 5th of November, 1912, in the fourth ward of the city of Charlotte, county of Eaton, State of Michigan, marked "Exhibit 14." I will read a little of page 2 of this book. [Reading:]

"STATE OF MICHIGAN, County of Eaton, ss:

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and will faithfully discharge the

duties of the office of inspector of this election held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"C. A. POPE,

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

WILLIAM JORDAN, *Notary Public*.

"My commission expires February 13, 1915."

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and will faithfully discharge the duties of the office of inspector of this election held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"J. A. GREENMAN.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"WILLIAM JORDAN, *Notary Public*.

"My commission expires February 13, 1915."

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and will faithfully discharge the duties of the office of inspector of this election held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"MARIAN PORTER.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"WILLIAM JORDAN, *Notary Public*.

"My commission expires February 13, 1915."

Mr. ADAMS. And from the same exhibit the following:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"CERTIFICATE OF INSPECTORS.

"We do hereby certify that the foregoing poll list has been carefully compared by us with the duplicate poll list, as required by law, and all mistakes found in such poll lists have been duly corrected by us and that said poll lists are now correct and agree with each other.

"In witness whereof we have set our hands at Charlotte, in said county and State, this 5th day of November, 1912.

"C. A. POPE,

"J. A. GREENMAN,

"MARIAN PORTER,

"*Inspectors of the general election held on*

"*Tuesday, the 5th day of November, 1912.*"

Q. This Greenman you speak of was, you say, an inspector at that election?—

A. Yes, sir.

Mr. ADAMS. He was a Republican alderman of that ward.

Mr. MAYNARD. We concede that; so was Mr. Pope.

Mr. ADAMS. How about Mr. Porter?

Mr. MAYNARD. I don't know about that.

Q. Do you know the politics of Mr. Porter?—A. I think I do.

Q. What were his politics on the 5th day of November?—A. I think he was a Bull Mooser.

Mr. ADAMS. Do you concede that Mr. Pope was an inspector on that day?

Mr. MAYNARD. Yes.

Q. What talk did you have? What occurred there on that election day in that voting place with reference to that challenge you had made? Just state, as near as you can, Mr. Johnson, what the conversation was, and with whom.

Mr. MAYNARD. We object to that as immaterial.

A. The challenge for this man was left there with me by Mr. Childs, an outside party, claiming he was not a resident of the ward. He took his ticket and got to the door of the booth, and ready to step into the booth, and I says, "There is a challenge left here, Mr. Pope." He stopped then and hesitated a little about what course to take, and I suggested to Mr. Pope he had better

take his ballot before having been marked and question him and ask him how long he had been in the ward, and he said he moved in a week ago last Monday. I says to Mr. Pope, "That evidently settles it; he has to be in the ward 20 days." They asked him from where he had moved there, and he said he moved over from the side, from the third ward, and Mr. Pope told him he would have to go over there. I said it would probably not do him any good if he had moved out of there within 20 days. They took the ballot and passed it to the next man that came in. The remarks you refer to, I suppose, is what Mr. Greenman said in regard to it. The next two or three men were evidently Democratic voters. As they came in he charged them to look out, they might get challenged; that Mr. Johnson was challenging the Democratic voters that came in. I evidently said to Mr. Greenman, "I think that is out of place; you have no right to make such remarks inside the voting place." Mr. Greenman says, "We have been in the habit of running the election here, and I think we know how without any advice from outside." Something to that effect. I don't know that those were the exact words. I suggested to him there might be some course to make him run it according to law, and that ended it. That is all there was to it.

Q. Was there anything said there that day to voters about voting the county ticket by any of those who were doing the work in connection with that election board?—A. There was, in the morning.

Q. What was said?—A. Mr. Pope and I had a little argument about whether it was the proper thing to call the voters' attention—Bull Moose voters' attention—to the fact that they had no county ticket.

Q. Did Mr. Pope call attention to any of those who came there to vote that day to the fact that there was no county ticket on the Bull Moose or Progressive ticket on the ballot?—A. No, sir.

Q. When did this talk with Mr. Pope occur?—A. In the morning.

Q. Before any voting was done?—A. Practically; yes, sir. There might have been a few votes in.

Q. Did Mr. Pope say anything to any of the voters there that day about voting the county ticket, in your presence?—A. There were one or two that had asked for instructions. Mr. Pope asked them if they wanted to vote the county ticket.

Q. Were those the only ones he asked whether they wanted to vote the county ticket?—A. I think so; there were but a few that asked for instructions.

Q. Now, did you go into the county clerk's office here with Mr. Sowers, the witness who left the stand a few minutes ago, to examine any of the returns in that office—election returns?—A. I either went in with Mr. Sowers or met him after I went in the office.

Q. What time was that?—A. It was on the 7th of November last.

Q. Tell what occurred while you were in there, and what you did and who was present, as far as you can.—A. Well, we had been getting the returns at the Democratic headquarters, and there was considerable confusion about the vote on Congressmen.

Q. Get to the county clerk's office; what occurred there?—A. I started to the county clerk's office; I understood the returns were there to be looked over, and I thought I would go and find out what the actual vote was. I met Mr. Towne at the corner near the drinking fountain, at the corner of the courtyard, and asked him to go up with me. I thought it would be a good idea to look it over. Whether we met Mr. Sowers between there and the courthouse or after we got in I am not quite sure. At any rate, when we got in we found the statement books on the desk, and Mr. Nichols had evidently just been taking off the vote. I think I personally asked Mr. Nichols if we could take the returns and take off the vote on Congressmen, and he said "Yes"; but he said, "I have got the figures here; I have just taken them off, and it will save you the trouble; you may take my figures." I says, "We prefer to copy them." And he turned them over to us. Mr. Sowers stood by the desk and read the figures on Congressmen, and Mr. Towne and I made our figures separately.

Q. From what?—A. From the figures Mr. Sowers read.

Q. What did he read from?—A. From the statement book; my recollection is that all the statement books were there, too; two of them were tally sheets. One of those tally sheets was in lead pencil. We took the vote down and compared our figures and footed them up and both arrived at the same result.

Q. On Congressmen?—A. Yes, sir.

Q. What result did you arrive at?—A. 912 majority for Mr. Smith.

Q. Or plurality?—A. Plurality.

Q. What did the figures that Mr. Nichols turned over to you show the plurality to be on Congressmen?—A. Mr. Nichols—there was 1,023 or 1,027; my impression was that it was 23; but Mr. Sowers says 1,027 in his testimony; it was 1,020 odd.

Q. Did you notice who was in the office at that time when you were there—during any of the time you were there that day?—A. I was not acquainted with any that were in the office personally, but afterwards I asked who they were. I didn't even know Mr. Nichols at the time; Mr. Towne informed me—

Q. (Interrupting.) Never mind that.—A. Mr. Nichols was there and Mr. Pray and Mr. Davis.

Q. Did you hear Mr. Pray do any telephoning while you were there?—A. Yes, sir.

Q. What did you hear?—A. I heard him read off the figures—

Mr. MAYNARD. We object to that as incompetent and immaterial.

A. (Continuing.) And Mr. Nichols took them down.

Q. Where did he get those figures from?—A. I understood they were from Hillsdale County.

Q. Was Mr. Pray using the telephone?—A. Yes, sir.

Q. Had he the receiver up to his ear?—A. Yes, sir.

Q. When Mr. Pray called off some figures Mr. Nichols took them down?—A. Yes, sir.

Q. This Mr. Pray did while he had the telephone receiver up to his ear?—A. Yes, sir.

Q. What did you hear Mr. Pray say while using the telephone at that time?—

A. I heard him say, "After January 1 you might meet me at Lansing."

Q. Did you hear him say anything about being the county clerk?—A. Yes, sir; that was when he first took the phone.

Q. What did he say?—A. He says, "This is the county clerk."

Q. Was there anything said there to Mr. Nichols or Mr. Pray about the election returns being taken from the sealed packages that you heard?—A. There was a little, I think. I think I said myself that it was a strange proceeding that they should have those books before they got to the board of canvassers.

Q. Did anybody make any reply to that?—A. I didn't hear anything, only Mr. Towne was talking, and I was talking about the matter between ourselves.

Cross-examination by Mr. MAYNARD:

Q. When you got in the books were lying on the table in the center office?—A. Yes, sir; they were out from the wall, in the first office.

Q. Was the table near the window toward the north?—A. I think it was near the center of the room; the table we went to was over on the north side of the room.

Q. Was there anyone examining these return books or statement books when you went in?—A. Mr. Nichols.

Q. Was he handling them?—A. Yes, sir.

Q. Anyone else?—A. I didn't see anybody else.

Q. There was quite a crowd in there?—A. No, sir.

Q. Did you say Sam Robinson was in there?—A. I am not sure he was at that time. I think he came in before we went out.

Q. Two of the returns were not there from two precincts?—A. The tally sheets—the two statement books were not there.

Q. Books of what townships?—A. I am quite sure that Roxand was one of them. I don't recollect about the other now.

Q. Did you see the statement books while you were there?—A. No, sir.

Q. Do you know of their being brought there while you were there, by mail?—A. No, sir.

Q. Were you there when they were brought in?—A. No, sir.

Q. Did you hear Sam Robinson's testimony yesterday?—A. No, sir.

Q. In which he said while he was there the statement books from two precincts were brought in by mail. Did you see that?—A. No, sir.

Q. If they were brought in by mail it was after you left?—A. I think so, because we took the votes from the tally sheets on Congressmen from those two precincts.

Q. Were the tally sheets with some of the officers who were making the returns here furnished?—A. I don't quite understand that, Judge.

Q. Before the official returns came in, the voters from about the county brought the returns to the county clerk's office for the Republican headquarters?—A. I suppose so.

Q. They did to your office, didn't they?—A. Yes, sir. We got most of them the night before.

Q. When you were there this afternoon of the 7th you supplied those places for which you did not have the statement sheets by referring to certain tally sheets?—A. Yes, sir.

Q. You don't know where they came from?—A. I do not. I suppose they were put in the books by mistake in place of the statement books. That was my impression at the time—that somebody had made a mistake and put in the tally sheets instead of the statement books.

Q. If the statements were delivered later that afternoon it was after you had departed?—A. I don't know about that.

Redirect examination by Mr. ADAMS:

Q. The statement books and tally sheets that you examined there, were they of like character as this that I hold before you now?—A. Yes, sir.

Q. Did they or not purport to be the tally books or tally-sheet books—statement books—that were signed by the inspectors of election?—A. I didn't look at the signatures on any of them. I just looked at the vote of Congressmen and took it off; I couldn't tell you as to that.

Q. Were those statement books and tally-sheet books that you examined there at that time the same ones that were handed to you or furnished by Mr. Nichols or Mr. Pray there in the office?—A. By Mr. Nichols.

Q. John C. Nichols?—A. Yes, sir.

Q. Were those books printed with the list of the officers or candidates for office in them?—A. Yes, sir.

Q. You talk about the tally sheets; do you mean a sheet, or was it what is called a tally-sheet book?—A. A tally-sheet book; we always call those tally sheets.

Q. When you mention in your testimony, then, "tally sheets," you mean what?—A. I mean tally-sheet book.

Q. Before you came over here to look those books over with Mr. Towne and Mr. Sowers, had you received from any source any figures that was claimed to be the plurality of Congressman Smith and Mr. Carney for Representative in Congress?—A. At the headquarters; yes, sir.

Q. What headquarters?—A. The Democratic headquarters.

Q. Was this examination that you made of the tally-sheet books and statement books in the county clerk's office November 7, 1912, the only examination that you made of those books?—A. We made them twice that day—in the morning with Mr. Sowers, and I went again in the afternoon; suggested that we go over and look the figures over ourselves for the reason that we might be called in court. We looked them over in the afternoon, so we could state the figures ourselves, and compared the figures.

Recross-examination by Mr. MAYNARD:

Q. When John C. Nichols handed you those books, did he give them to you?—A. I think he did; yes, sir. In the afternoon we got part of them in the second room; some were in the front room and some in the second room.

Q. You looked at the tally book or tally sheet of Roxand?—A. My recollection is that Roxand was in lead pencil in one of the tally-sheet books.

Q. There is the tally sheet from Roxand; that is not in lead pencil?—A. No, sir.

Q. What do you mean by "tally sheet"?—A. The books they make the tally on; this is a statement book, the book they make the statement on.

Q. Is that the one you mean? [Handing book to witness.] That is a tally book, isn't it?—A. That is in ink; the one I had reference to was in lead pencil.

Q. Then it was not this book?—A. No, sir.

Q. This is the tally sheet book from Roxand?—A. Yes, sir.

Q. If you looked at the tally sheet, it was not that one, was it?—A. There are two copies of these tally sheet books, are there not? Are these the ones that came to the clerk's office?

Q. Yes, sir.—A. Here is one in lead pencil now.

Q. Where is that from?—A. The township of Benton; that is probably the one I saw; I don't remember of but one being in lead pencil.

Mr. ADAMS. The totals are carried out with an indelible lead pencil.

Q. You think on examination that this tally sheet from Benton is the one you referred to?—A. Yes; I said I was not sure which township it was from, but I remember distinctly of one being in lead pencil.

Q. That is an indelible pencil?—A. Yes, sir; I think it is.

Q. The figures in the right-hand column where they are carried out?—A. Yes, sir.

Q. Where they have been dampend they show up a purple color?—A. Yes, sir.

Q. Will you look at that and state whether or not in this case there has been any interlineation or changes in the figures in this book—that is, Representative in Congress—in the Smith and Carney vote or the Dingley vote?—A. No, sir; I don't think there has been any change there; there has been a change there evidently [indicating].

Q. But that is not on their vote?—A. No, sir; not on Congressmen.

Q. Here it shows the figures have been dampened?—A. Yes, sir; it is marked over from 109 to 108, I think, there.

Q. There has been no change in the congressional vote?—A. I didn't intend to intimate that there had been any change.

Q. I want it on the record that there has been no interlineation or change.—A. I suppose that was the recollection of the man when he took the vote from the tally sheet instead of the statement book.

Q. When did you make these figures when Mr. Sowers and yourself and Mr. Towne were present?—A. It was just before dinner; then Mr. Towne and I went back after dinner.

Q. You two alone?—A. Yes, sir.

Q. Mr. Sowers was not there then?—A. No, sir.

Q. Which time were the books brought from the inside office?—A. In the afternoon.

Q. You were subpoenaed as a witness?—A. No, sir.

WILLIAM WITHERALL, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Witherall, where do you reside?—A. Sunfield village.

Q. You have lived there about how long?—A. In the village about 10 years.

Q. In that township?—A. In that township about 56 years.

Q. Your age is what?—A. Fifty-seven.

Q. Were you in the village of Sunfield on the 5th day of November, 1912?—A. I was.

Q. Did you take any part in the general election that was held in that village on that day?—A. Not in the daytime; no, sir.

Q. Did you at night?—A. I was in there in the evening; I relieved one of the inspectors, or one of the clerks, rather.

Q. What time did you go in there?—A. Oh, probably about 8 o'clock.

Q. Who did you relieve?—A. I relieved a man named Sayre.

Q. What did he assist in doing?—A. Tallying.

Q. Did you mark down or make any marks on the tally book?—A. Sure; yes, sir.

Q. Who was acting on the board there at that time when you commenced?—A. Mr. Knapp, the clerk or deputy clerk, Squire Bacon and Mr. Hager; I think that is all that was there at that time except Mr. Sayre, and he went out just as I went in.

Q. How long did you stay there?—A. Oh, I think about an hour all told.

Q. Who took your place when you quit?—A. Mr. Mapes, when he got back.

Q. Were there any others there on that election board at the time you left than those you have mentioned.—A. I took Mr. Knapp's place at the time Mr. Mapes came back; he wanted to go out for something and I tallied for him until he got back.

Q. Do you know Mr. Sayre?—A. Yes, sir.

Q. Did you vote at that precinct that election day?—A. Yes, sir.

Q. What did you see Mr. Sayre doing there, if anything, when you were in that voting place?—A. I saw him instructing.

Q. Where was he stationed?—A. He was stationed back of the booth; the way the election booths are placed there they form a partition between the room where the inspectors are and where the instructor is.

Q. Mr. Sayre was on one side of that partition?—A. Yes, sir.

Q. And the rest of the members of the board on the other side?—A. Mr. Sayre was near to the inside gate.

Q. When the voters came in where did they get their ballots?—A. From Mr. Sayre.

Q. Did they get their ballots in the presence of the officers of that election board or not, in sight of them?—A. I don't know whether they could see them or not; I don't think they could.

Q. These booths were between them, were they not?—A. Sometimes, if the doors were open so you could see back and forth.

Q. That is the booth doors?—A. Yes, sir.

Q. There were two doors to these booths?—A. Yes, sir.

Q. Unless the booth doors were open they could not see through?—A. Yes, sir.

Q. The officers of the election could not see the voter when he received his ticket from Mr. Sayre?—A. No, sir; they could not.

Q. Did you see Mr. Bera there, at any time, acting on the board?—A. No, sir; he was not there at the time I was there.

Q. How frequently were you in the voting place there on the day of election prior to the time?—A. I was not in there five minutes all day; I went in just as I was going to dinner and didn't go in again until after it was closed.

Q. Were you present to know whether the board made any adjournment that night?—A. No, sir; I saw nobody; I suppose, however, it was 12 o'clock.

Q. Do you personally know that the board convened the next morning at Mr. Bacon's office? Were you there when the board convened?—A. No, sir; I had nothing to do with it.

Q. You didn't happen to be there?—A. No, sir.

Q. You were not at that voting place about 12 o'clock on the night of November 5?—A. No, sir.

Q. You went away soon after you quit assisting the board in keeping the tally?—A. Pretty soon afterwards; I didn't stay; I saw there was an all-night job if they stuck to it before they got through, so I didn't stay.

Q. About what time in the day did you vote, about noon?—A. Just before dinner; just before the polls closed for dinner.

Q. Were you there when they closed the polls for the noon-day meal?—A. No, sir; it was near noon; I suppose they must have closed right away.

Q. How far do you live from the city of Charlotte?—A. Well, it is an angling road; it makes it nearer—I don't know just the number of miles, I think about 23 miles.

Q. About 23 miles?—A. I don't think it is quite that far; Sunfield is 8 miles west of this, and it is within half a mile of the north line, so you can figure it yourself.

Q. You were subpoenaed to appear here?—A. Yes, sir.

Q. Who subpoenaed you?—A. A deputy sheriff.

Q. Were you paid your fees?—A. Yes, sir.

Q. How much were you paid?—A. \$3.05.

Cross-examination by Mr. FELLOWS:

Q. Are you active in politics over there?—A. No, sir; I am not a politician.

Q. What I mean, you are not one of the party managers or a member of the party committee?—A. No, sir; I am a member of the Democratic county committee, I think.

Q. A member of the Democratic county committee?—A. Yes, sir.

Q. And you have been for some years?—A. I don't know how many years, I couldn't tell you as to that.

Q. Have you known Mr. Palmer over there for a great many years?—A. About 25, I think.

Q. Mr. Palmer is a good, substantial citizen of the township of Sunfield?—A. Yes, sir.

Q. He is regarded as an honorable, upright man?—He is a pretty prominent—is his reputation at stake now?

Q. He is regarded as an honorable, upright man?—A. Yes, sir.

Q. You knew Mr. Bacon in his lifetime?—A. Yes, sir.

Q. Mr. Bacon's reputation was the same, was it not?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. I didn't know that his reputation was at stake.

Q. Answer what I ask you, and we will get along faster.—A. Sure, he had a good reputation.

Q. Mr. Palmer is and has been a Democrat ever since you have known him?—A. Yes, sir.

Q. What party did Mr. Bacon belong to?—A. To the Democratic Party.

Q. Both Mr. Palmer and Mr. Bacon were Democrats last fall and supporters of the Democratic ticket?—A. They were Democrats, I suppose; I don't know what they voted.

Q. Didn't you understand that they were supporting the Democratic ticket?—A. I don't know anything about what—

Mr. ADAMS. I object to that as irrelevant and immaterial.

A. I suppose they were Democrats.

Q. Mr. Hager—what was his politics?—A. A Republican.

Q. Was he firm in the faith last fall or did he slip a little?—A. I can give you my opinion, if you want to know, I think he was a Bull Mooser.

Q. Mr. Hager had the reputation in that community of being an honorable, upright man?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. Those were the three members of the board?—A. Those were the three inspectors; yes, sir.

Q. None of them, as you understand, were Republicans?—A. Well, I don't know, as I told you before; I don't know how they voted.

Q. You understand that Mr. Hager supported Mr. Roosevelt?—A. That is what I think.

Q. Of the three inspectors none of them were Republicans?—A. No, sir.

Q. What was Mr. Sayre's politics?—A. I don't know.

Q. Mr. Sayre was a man who in years gone by had been supervisor of Sunfield, hadn't he?—A. No, sir.

Q. He had lived in the township a great many years?—A. About 10 or 12 years.

Q. He was a man also who had the reputation of being an honorable, upright citizen of the township?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. A man whom people looked up to and respected?—A. Yes, sir.

Q. You say you understand he was a Democrat?—A. That is what I understand; I don't know how he was enrolled.

Q. Do you know the politics of Mr. Mapes and Mr. Knapp?—A. I think I do; the same as the others.

Q. That is what I am asking you.—A. I think they were Republicans.

Q. Notwithstanding that, they also have a good reputation in that community, haven't they?

Mr. ADAMS. The same objection.

A. Yes, sir; all except their being Republicans.

Q. Then, as a matter of fact, everybody connected with that election in Sunfield Township were of your good citizens over there?—A. Yes, sir.

Mr. ADAMS. The same objection.

Q. Whatever you did you did correctly, didn't you?—A. I intended to; yes, sir. I have been on the board for the last 12 years about every election; I was in there; the boys asked me to relieve them; that is all.

Q. The tally was kept in duplicate?—A. Yes, sir.

Q. While you kept it you kept it correctly?—A. Yes, sir; as straight as I could; I calculated to keep it straight.

Redirect examination by Mr. ADAMS:

Q. I suppose you put down what was called off to you?—A. Yes, sir.

Q. Somebody called off and said a vote was for this candidate or that; you would put it down?—A. Yes, sir.

Q. You don't know whether it was called off straight or not?—A. No, sir; I couldn't tell about that.

By Mr. FELLOWS:

Q. Who did the calling off while you were in there?—A. Mr. Bacon called off awhile and Mr. Hager called awhile.

Q. They were both inspectors?—A. Yes, sir; one was calling off and the other was looking over his shoulder. They had the split tickets and they gave the vote on those. A man was looking over his shoulder or opposite him, both looking at the ticket.

By Mr. ADAMS:

Q. I ask you whether you took any oath of office before you did any work on the election board that night?—A. No; I did not.

Q. Did you at any time, working there, before or after, on 'that day?—A. No, sir; not that day.

Q. Or any other day, to act on that board?—A. Not on that board; no, sir.

By Mr. FELLOWS:

Q. You would not have done the work any more correctly if you had taken an oath?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. No, sir.

Q. How long have you been a member of the county committee—the Democratic county committee?—A. Four or five years; I believe six years.

By Mr. ADAMS:

Q. Are you sure you are a member of the county committee?—A. I am not sure I am at the present time.

Q. Are you sure you were a member of the county committee on the 5th day of November, 1912?—A. No, sir; I would not swear to it. I was up to last spring, I think, but I am not sure whether I was elected again or not. Mr. Palmer would remember that better than I would.

Q. You were enrolled, were you, as a voter at that election?—A. I was enrolled; yes, sir.

By Mr. FELLOWS:

Q. You haven't received any notice that your job has been taken away from you?—A. I changed my politics; I wouldn't wonder if they had taken it away; I enrolled differently.

By Mr. ADAMS:

Q. How did you enroll?—A. I enrolled as a G. O. P.

Q. You mean as a Republican?—A. Yes, sir.

Q. Were you enrolled as a Republican prior to the time you acted on that election board—November 5, 1912?—A. Yes, sir.

Q. So when you acted on that board November 5, 1912, you were enrolled as a Republican?—A. I was enrolled as a Republican.

By Mr. FELLOWS:

Q. You say you were enrolled as a Republican?—A. Yes, sir.

Q. Do you mean you were enrolled as a Republican and a Democratic voter?

Mr. ADAMS. I object to the inquiry; it is the constitutional right of the witness to refuse to answer the question, and I am a little surprised that the attorney general should ask that question. The laws of the State of Michigan are calculated to secure the secrecy of the ballot. I object to it as incompetent.

Q. What I am getting at is whether you actually changed your politics or not by the change of enrollment?—A. I have not changed my politics.

E. G. DAVIDS, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Davids, you live where?—A. In the city of Charlotte, this county.

Q. You have lived in this city how long?—A. It has been nearly 12 years.

Q. Were you living here on the 5th day of November last?—A. Yes, sir.

Q. How old are you?—A. I am 41.

Q. Do you know John C. Nichols, of Charlotte?—A. Yes, sir.

Q. Did you see John C. Nichols in any of the election precincts—I mean, rather, in any of the voting places in any of the precincts in Charlotte—on the 5th day of November, 1912?—A. Yes, sir; in the second ward I saw him.

Q. What did he do in that voting place there?—A. He was receiving—I saw him two or three different times, both inside and outside of the railing.

Q. What, if anything, did you see him doing inside of the railing of that voting place?—A. I saw him receiving ballots and depositing them in the ballot box.

Q. What time in the day about was that?—A. It was about the noon hour; I have forgotten whether just before or just after I went to dinner.

Q. Was Mr. Hamilton, the inspector, in that voting place?—A. Yes, sir; he was.

Q. What was his given name?—A. They call him "Hal." I don't know.

Q. You saw Mr. Nichols and you saw him doing what?—A. He was receiving ballots from the voters and depositing the ballots in the ballot box.

Q. Is that the same John C. Nichols who was a candidate on the Republican ticket at that election for the office of circuit court commissioner of Eaton County?—A. The same man; yes, sir.

Q. How long were you in that voting place and observed Mr. Nichols doing that work?—A. Now, just how long I was in there at that time I couldn't say; probably 10 minutes, possibly longer.

Q. He received ballots you say—Mr. Nichols did—from the voters?—A. Yes, sir; I saw him receiving ballots from the voters.

Q. What did he do with them?—A. He deposited them in the ballot box.

Q. Any other time on that day or the evening of that day, in that precinct, did you see John C. Nichols doing anything in connection with the election?—A. I saw him in the evening after the polls were closed and while they were counting the ballots; I saw Mr. Nichols inside of the railing looking over the ballots with the other inspectors, seemingly helping them to decide in regard to what votes should be counted and what should not be counted.

Q. Did he say anything about the ballots or any of them at that time?—A. I think I heard him make the remark that it was the intention of the voter, so and so—of course, I was some distance away and I don't know just what it was.

Q. Do you know whether this same John C. Nichols was at any time during that election day acting in any other capacity in that precinct at the voting place?—A. He was the Republican challenger for the Republican Party.

Q. Do you know Hal Hamilton, the gentleman you referred to a little while ago?—A. Yes, sir.

Q. Did you know him prior to the 5th day of November, 1912?—A. I have known him for some years.

Q. What did you see, if anything, Hal Hamilton doing in connection with the work there on that election board that day?—A. In the forenoon Hal Hamilton was acting as one of the inspectors—receiving ballots and depositing them in the ballot box.

Q. You saw him doing that?—A. Yes, sir.

Q. Did you see Mr. Hamilton at any time that day talking to any voters in that voting place?—A. There was an old gentleman that stood outside the railing and Mr. Hamilton was inside of the railing, and as I came along Mr. Hamilton had a ballot in his hand. I could not say whether it was an instruction ballot or what kind of a ballot it was, but he had a ballot, evidently because of the conversation; he had a piece of paper in his hand.

Q. What color was the paper?—A. I couldn't say; but I heard him say to this old gentleman, "If you wish to vote for Mr. Smith and the Republican county ticket mark your ballot this way," indicating it on the ballot how it should be marked.

Q. The railing you speak of was the dividing line that separated the election board and the booths from the people who came in there, I suppose?—A. Yes, sir.

Q. That is the railing you speak of?—A. Yes, sir.

Q. Mr. Hamilton was inside of the railing and this gentleman on the outside of the railing?—A. Yes, sir; on the south side of the booth.

Q. How close together were the two men standing?—A. Rather close together.

Q. Two feet?—A. I don't think that far apart.

Q. Have you held any official position in the city of Charlotte?—A. Yes, sir.

Q. What?—A. I have been justice of the peace and mayor.

Q. How long ago were you mayor?—A. My time expired last spring a year ago.

Q. How long were you mayor?—A. Two years—two terms.

Q. One year each?—A. One year each.

Mr. ADAMS. I offer in evidence Exhibit 15. I am reading from what is shown to be the poll book for the general election Tuesday, the 5th day of November, 1912, the second ward of the city of Charlotte, Eaton County. From page 2 of that exhibit, under the heading "Oaths to inspectors of election."

"STATE OF MICHIGAN, *County of Eaton*, ss:

"I do solemnly swear that I will support the Constitution of the United States and of this State, and that I will faithfully discharge the duties of the office of inspector of this election held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"CLAUDE S. KNOWLES.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"FRANK P. TOWNE, *Notary Public*.

"My commission expires September 9, 1913."

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of inspector of this election held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"C. R. BARBER.

"Taken, subscribed, and sworn to before me this 5th day of November, 1912.

"FRANK P. TOWNE, *Notary Public.*

"My commission expires September 9, 1913."

Mr. ADAMS. I want to have it appear upon the record that there is no other certificate showing that Hal Hamilton was sworn to act as an inspector of that election on that day; and further that the returns do not show that any others than Claude S. Knowles and C. R. Barber were sworn to act as inspectors of that election. They were sworn to act as inspectors of that election, and there is no indication on this exhibit to show that any others except Claude S. Knowles and C. R. Barber did act as inspectors of that election on that day. I also desire to offer from this same exhibit the following:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"CERTIFICATE OF INSPECTORS.

"We do hereby certify that the foregoing poll lists have been carefully compared by us with the duplicate poll list, as required by law, and all mistakes found in such poll lists have been corrected by us, and that both said poll lists are now correct and agree with each other.

"In witness whereof we have hereunto set our hands this 5th day of November, 1912.

"CLAUDE S. KNOWLES,

"*Inspector of the General Election*

Held Tuesday, the 5th day of November, 1912."

Mr. ADAMS. The exhibit I am reading from does not show that any other inspector signed the certificate just read, save Claude S. Knowles.

Cross-examination by Mr. MAYNARD:

Q. You have been here in the city when boards were organized at these election polls a good many times, haven't you, in the morning?—A. I don't know whether I was ever present when it was organized or not.

Q. Didn't you ever see the officers sworn in?—A. I think I was there once, and I think I swore them in once.

Q. You swore them in early in the morning?—A. Yes, sir.

Q. Later in the day, at their convenience, they made out these certificates and signed them?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not the best evidence; if he ever swore them in, there would probably be a record of what he did.

A. When I swore in the officers they were signed up and sworn to at the time.

Q. Are you positive about that?—A. I am pretty positive.

Q. I never saw that done in my life yet.—A. I don't think I ever swore them in more than once or saw them sworn in except that once; I don't get up usually early enough in the morning.

Q. You knew what office Mr. Hamilton held in the city at that time?—A. Yes, sir.

Q. What was it?—A. He was alderman of the second ward.

Q. Do you know what officers in the city are made inspectors of election by the charter of the city of Charlotte?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not the best evidence.

A. The aldermen.

Q. Two aldermen in each ward?—A. Yes, sir.

Q. Mr. Hamilton then would be ex officio an inspector of the election?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not the best evidence—calling for the conclusion of the witness and argumentative.

A. He would be an inspector of election.

Q. He so acted during the forenoon of that day?—A. I saw him acting, I think, twice during the forenoon.

Q. Do you remember the name of the old man you say he was talking to when the man stood outside of the railing?—A. I don't know whether I knew the old man or not; he stood with his back to me, and I was 10 feet, perhaps, away. I didn't pay very much attention, only I thought it was not proper for him to do it.

Q. Did you hear the conversation?—A. I didn't hear all of the conversation.

Q. You don't know what the old man asked him then?—A. No, sir?

Q. You didn't hear Mr. Hamilton request him to vote for any particular candidate, did you?—A. No, sir; all I heard is what I stated.

Q. Give us that again.—A. "If you wish to vote for Mr. Smith and the Republican county ticket, mark your ticket this way." He indicated on a piece of paper he had.

Q. Those are all the ones you heard him say anything about?—A. Yes, sir; I was just passing along.

Q. Were there any others near?—A. I think there were others in the room at that time; just how close they were I don't know.

Q. Which place did Mr. Hamilton stand—where they received the ballots and put them in the box?—A. He stood pretty well—

Q. Was there any challenger there, Mr. Overmyer?—A. I don't know whether he was there at that time or not.

Q. Did you notice whether he had his seat near where the inspector would deposit the ballots?—A. I couldn't say in regard to that time.

Q. You don't remember that?—A. Not at that time; no.

Q. You can't tell precisely what time in the day that was?—A. It was in the forenoon; I couldn't say what time exactly.

Q. About the noon hour?—A. No, sir; it was before the noon hour.

Q. Was it the first time you were in that morning?—A. I couldn't tell you that whether the first or not.

Q. You visited around the polls during the day?—A. Yes, sir.

Q. Kind of keeping a watch on the election?—A. In a way.

Q. Were you interested in the result of that election?—A. I was.

Q. You were a candidate for judge of probate?—A. Yes, sir.

Q. On the Democratic ticket?—A. Yes, sir.

Q. And you were around from time to time all day?—A. Yes, sir.

Q. How many voting precincts were there in the city?—A. There were four.

Q. The first, second, third, and fourth wards?—A. Yes, sir.

Q. Did you go in in the afternoon in the second ward?—A. I was there, I think, once or twice in the afternoon; I couldn't state just how many; I don't remember.

Q. Who was receiving the tickets and depositing them the next time you went in?—A. Mr. Barber was receiving the tickets.

Q. Do you know Mr. Davids, or did you hear that Mr. Hamilton was taken ill and they got Mr. Barber to take his place?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and hearsay.

A. I heard he was taken sick; yes, sir.

Q. You think that you were in there at least ten minutes while John C. Nichols was receiving ballots and depositing them?—A. I should judge about that time.

Q. How many did you see him put in?—A. Several; I couldn't state exactly how many.

Q. How many do you think?—A. Well, I couldn't state exactly; there might have been six or a dozen voted.

Q. Do you say six were put in while you were there?—A. At least six.

Q. Would you want to say there were?—A. I wouldn't want to say so positively.

Q. At any rate several votes were put in?—A. Yes, sir.

Q. When you went in at night they were counting up?—A. Yes, sir.

Q. Were the booths down or up?—A. The booths were down, I think.

Q. They were light canvas booths?—A. Yes, sir.

Q. That was the first time they had ever been used?—A. Yes, sir.

Q. Did they have them down so the counting was in public so anyone could see them counting?—A. They couldn't see the ballots.

Q. They were surrounded by the railing?—A. Yes, sir.

Q. What was it you heard John C. Nichols say that evening about the ballots?—A. There was some dispute; I couldn't give the exact language; some

dispute about counting a certain ballot I know and Mr. Nichols expressed his opinion in regard to it.

Q. To refresh your recollection, didn't Mr. Knowles say that he could determine from that ballot what the intention of the voter was, and didn't Mr. Nichols say he didn't see how he could tell what the intention of the voter was; was it not something of that nature?—A. I couldn't say whether Mr. Knowles said anything or not. There was a dispute about the ballot.

Q. Finally, Mr. Knowles did as he had a mind to and did not follow the advice of Mr. Nichols?

Mr. ADAMS. I object to that as calling for the conclusion of the witness.

A. I don't know whether Mr. Knowles was inside or not.

Q. You don't know anything about that?—A. All I know is what I have stated.

Q. You don't know what John said, or which side of the question he was on?—A. No, sir; I didn't see the ballot.

Q. You don't charge that he was insisting, that he was finding fault with some course, trying to insist upon some course being followed, do you?

Mr. ADAMS. I object to that as incompetent and calling for the conclusion of the witness and that the question does not call for anything that was said.

A. I took it he was entirely out of place, being inside of the railing.

Q. He was a challenger, did you say?—A. Yes, sir.

Q. He was the Republican challenger at that time?—A. Yes, sir; and also on the county ticket running for office.

Q. Do you understand that it is the law that a man running for office is forbidden by the law to be a challenger?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

A. Well, I don't know as I am required to give my opinion of the law.

Q. What is your profession?—A. I am a lawyer.

Q. How long have you been in the practice of the law?—A. Ten or eleven years.

Q. Do you understand it is the Michigan law that there is any statutory prohibition forbidding a candidate for office to act as challenger for his party?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial. The law speaks for itself, and it is not for the witness to construe.

A. What I meant when I said I didn't think he had any right——

Q. Answer the question.

(Last question read.)

A. I don't know as there is.

Redirect examination by Mr. ADAMS:

Q. Do you know whether there is or is not such a law as counsel asked you about in his last question?—A. I do not think that there is a law forbidding the question he put to me.

Q. You understood, did you, that Mr. Nichols was a candidate on the Republican ticket at that election?—A. Yes, sir.

Mr. ADAMS. There is no question about that, is there gentlemen?

Mr. MAYNARD. No, sir.

Q. Mr. Nichols was in there while he was a candidate on the Republican ticket, I understood you to say, handling, receiving, and depositing ballots?

Mr. FELLOWS. We object to that as leading.

A. Yes, sir; I understand the law prohibits that in this State.

Recross-examination by Mr. MAYNARD:

Q. Mr. Nichols was not handling any votes when they were counting them up; he was not assisting in the count?—A. He had a ballot in his hand; I can't say whether he was assisting in the count.

Q. He didn't assist in the count?—A. I didn't see him assisting in the count; no, sir.

Q. Are you sure you didn't know the old man that Mr. Hamilton was talking to?—A. No, sir.

Q. Can you give me a description of him so we can find him?—A. No, sir. I can't give you a very good description of him; he stood with his back to me.

Q. A short man or long?—A. He was a man I should judge about 5 feet 7 or 8.

Q. What kind of a hat did he have on?—A. He had on a slouch hat—a black hat.

Q. And a black coat?—A. He had on dark clothes.

Q. An overcoat?—A. I couldn't tell you.

Q. You don't know whether he had on an overcoat or not?—A. I think he had on an overcoat, but I am not sure about that, though; I didn't look him over with the intention of testifying about that.

Q. Was he a gray-headed man?—A. I would say he had gray hair.

Q. Was he smooth shaven or did he have a beard?—A. I didn't see enough of his face to tell you.

(By consent of the contestant and the contestee and their counsel, the hearing was adjourned until Thursday, February 27, 1913, at 10 o'clock in the forenoon, to meet in the supervisors' room in the courthouse in the city of Charlotte, Eaton County, Mich.)

In above-entitled matter it is hereby stipulated by and between the respective parties, by their respective attorneys, that each and every witness produced as shown by the foregoing record was duly sworn, and his testimony was as given by him taken down in shorthand by Joseph W. Stockwell, United States commissioner for the western district of Michigan, and by said commissioner was transcribed and written out by typewriter machine as shown by this foregoing record; that all of said testimony, after being so written out, was carefully read over by counsel for said respective parties, and the foregoing record correctly shows the testimony of each and every witness and the proceedings had and taken to the close of said record.

It is further stipulated and agreed that said respective witnesses need not read over, attest, and sign their foregoing depositions, and that the writing out of the testimony from said shorthand notes of said respective witnesses in their presence, respectively, is hereby waived.

It is further stipulated that the foregoing depositions may be used for all purposes of this contest, subject to all objections and motions appearing on the foregoing record, with like effect as if the same fully complied with the Revised Statutes of the United States and the printed rules of the Committee on Elections, House of Representatives, applicable thereto.

Dated this 28th day of February, A. D. 1913.

JOHN W. ADAMS, *Attorney for Contestant.*

HORACE S. MAYNARD, *Attorney for Contestee.*

FEBRUARY 27 and 28, 1913.

E. A. JOHNSON, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Johnson, where do you reside?—A. I live in Bellevue, Eaton County, Mich.

Q. Were you living there on the 5th day of November, 1912, election day?—A. Yes, sir.

Q. How long have you lived in that township?—A. I have lived in the township of Bellevue about 45 years.

Q. What is your age?—A. I am 72.

Q. Did you take any part in the election as an officer, gatekeeper, or otherwise, at Bellevue, on the 5th of November, 1912?—A. Yes, sir; I was gatekeeper.

Q. For identification I have had marked as Exhibit "16" a book entitled "Poll book of the general election held on Tuesday, the 5th day of November, 1912, in the village council rooms, township of Bellevue, County of Eaton, State of Michigan," and call your attention now to that exhibit and ask you whether that is your signature to the oath of gatekeepers at that election?—A. Yes, sir.

Q. You signed that, did you?—A. I did, sir.

Q. On that 5th day of November, 1912?—A. Yes, sir.

Q. You were sworn before Dan L. Hall?—A. Yes, sir; and Mr. Evans, too.

Q. Now after taking that oath on that day there, state whether you did act as gatekeeper at that election on that day.—A. I did.

Q. What gate did you have charge of that day?—A. I had charge of the entrance gate.

Q. How many booths were there there in that voting place that day?—A. I think there were six.

Q. Were they wooden booths?—A. Yes, sir; wooden booths.

Q. Do you know whether any instructions were given that day there to anybody, to any of the voters who voted there in that voting place on that day?—A. Why, there were several, I couldn't say how many, that were partially blind, and they had no glasses, and they wanted instructions and they asked for them.

Q. Do you know whether there were any there who applied for instructions on the ground that they could not read nor write the English language?—A. Well, now, I think there were one or two there, Hungarians that had not been naturalized there, they couldn't read the English language; they were pretty good scholars, however, in their language.

Q. Was there an oath administered to any one of those men who applied for instructions in the manner of marking their ballots there that day by any of the officers of that election that you know of?—A. Why, I don't think there were; I don't remember any such thing.

Q. Who went into the booth or booths with the men who applied for instructions in the matter of marking their ballots there?—A. Well, the two justices of the peace on the board—one is named Hall and the other is named John Rogers—they were the ones that gave out the tickets, and when they were instructed they went in the booth with them.

Q. Did two of the inspectors go into the booths with the same man who applied for instructions or only one?—A. One; that is right.

Q. One besides the voter?—A. Yes, sir.

Q. Do you know a man named Hoyt?—A. Yes, sir.

Q. Abe Hoyt?—A. Yes, sir.

Q. Was he around that voting place on that election day; did you see him there?—A. Yes, sir; I let him into the booth, into the gate, and he voted about 10 o'clock in the forenoon.

Q. Did he come into that voting place again that day?—A. Yes, sir.

Q. When?—A. Right after dinner.

Q. You saw him?—A. I did, sir.

Q. Did he come in with anyone?—A. Yes, sir.

Q. Who did he come in with?—A. With blind Orin Kimberly.

Q. Kimberly was a blind man?—A. Yes, sir; totally blind.

Q. Just describe what Mr. Hoyt did when he came in with this man?—A. Well, he led him up to the gate, and I spoke to Mr. Kimberly, and I told him—I took hold of his shoulder so [indicating]—there was quite a little alley up to the booth, still there was a railing between him and the board, and Hoyt went through on the other side.

Q. You speak of the board, what board?—A. I mean the election board.

Q. Go on.—A. He said he had agreed to see Uncle Orin through.

Q. Who said that?—A. Mr. Hoyt, and led him up toward the booth. Now he opened the door of that booth, but whether he went in or not, that I couldn't swear to.

Q. Was Mr. Hoyt at that time that you have just described within or without the railing?—A. He was within the railing.

Q. He had voted at 10 o'clock on that day?—A. Yes, sir; before 10 o'clock, because I think the number of his vote was 10.

Q. His number is No. 18.—A. Somewhere along there.

Q. A. B. Hoyt?—A. Yes, sir.

Q. I show you Exhibit 16, and call your attention to the list of voters under the head "Number of voters," under the head "Name," the name of A. B. Hoyt.—A. Yes, sir.

Q. Is that the Hoyt you referred to?—A. Yes, sir; Abraham B. Hoyt.

Q. Now, then, what happened then?—A. Well, I don't know where Hoyt went to; he didn't come out by me.

Q. Did he come out through that gate?—A. No, sir; he went in my gate, but he didn't come out there. There was a large crowd there right after dinner, and I had to work so to let the men in.

Q. Do you know whether this man Hoyt was a Democrat or a Republican or belonged to some other party?—A. He is called a Republican there in the town, and I guess he is.

Q. Do you know whether the A. B. Hoyt you have been testifying about was working in the interest of John M. C. Smith prior to that election day?—A. He says he was.

Q. Did he tell you so?—A. Yes, sir.

Q. Do you know whether or not he was working for John M. C. Smith, candidate for Congress at that election on that election day on the Republican ticket?—A. Yes, sir.

Q. Was he?—A. Yes, sir; he said he did; he told me so himself, and I have to believe it.

Q. What did Mr. Hoyt tell you he did?

Mr. MAYNARD. We object to that as incompetent, irrelevant, and immaterial.

A. Well, he told me he dug some potatoes for a man, so he could come and vote.

Q. So who could vote?—A. The man he was digging the potatoes for; he went out on the outskirts of the town.

Q. Did he tell you who the man was he dug potatoes for?—A. Yes; he told me, but I can't remember who it was; I don't pay much attention to those things, anyhow.

Q. Did he tell you anything about going to work for this man, so this man could come and vote for some particular person at that election?—A. He said he worked for John M. C. Smith.

Q. Did he tell you anything about going to work for this man so this man could come and vote for some particular person at that election?—A. He said he was after voters.

Q. Who said that?—A. Mr. Hoyt.

Q. Did he tell you anything more, this Mr. Hoyt?—A. Yes; he told me more, but I don't know as it has any bearing on that, unless you want me to tell it.

Q. You were there in attendance as gatekeeper that day from what hour in the morning?—A. Well, sir, I got there somewhere about 7 o'clock and helped put the booths up, and after the booths were put up we got the railing put up.

Q. Did you go away?—A. Yes, sir; I went to dinner.

Q. At any time during the time the election board was in session?—A. Yes, sir; to dinner.

Q. What time did you go to dinner?—A. About 12 o'clock.

Q. When did you get back?—A. Somewhere in the neighborhood of 1 o'clock; Mr. Eavans just went to dinner, the other gatekeeper.

Q. How long did you stay there then?—A. When Mr. Hoyt came in with Mr. Kimberly, Mr. Eavans was not there; he was to his dinner.

Q. How long did you stay there after you got back from your dinner?—A. In the booth?

Q. In the voting place?—A. Until the polls closed at 5 o'clock.

Q. Were you there during the time the vote was being counted?—A. Yes, sir; I was there part of the time. I went home somewhere about 10 o'clock at night.

Q. How many men, according to your best recollection, were given instructions in the manner of voting there that day?—A. Well, sir, I couldn't tell you how many; I didn't keep any tally or count; it would be guesswork if I should say.

Q. Several?—A. I saw five or six, and maybe more than that; might have been more.

Q. Were there many foreigners voting there at that election?—A. Not a great many; I don't think there were over five or six from the cement plant that voted.

Q. Do you know a man by the name of H. M. Weed?—A. Yes, sir.

Q. Do you know whether he held any official position in Bellevue at the time of that election?—A. Why, he was head of the board, supervisor.

Q. He was supervisor from Bellevue township?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. Mr. Johnson, have you ever acted as gatekeeper at any other election in Bellevue than this one?—A. Yes, sir.

Q. You have done so several times?—A. Well, yes.

Q. You are pretty well acquainted with the voters in that precinct?—A. I ought to know them all pretty well.

Q. You saw the most of the voters that entered that precinct that day, didn't you, when they went in?—A. I had to; they had to go by me to get in.

Q. You knew them all?—A. No, sir.

Q. The most of them?—A. No, sir; there were men in Bellevue I didn't know.

Q. How many of them?—A. There was a lot of new people that moved in there and they have large farms.

Q. But the great bulk of voters you knew?—A. Yes, sir; I knew them while I have been a resident there 45 years.

Mr. ADAMS. I object to that, not having had time to make an objection before the answer; I object to the question as irrelevant and immaterial and move to strike out the answer for the same reasons.

Q. They are all good, straight, honest men?—A. Yes, sir.

Q. Were you acquainted with the members of the board?—A. Yes, sir.

Q. The election board at that precinct on that day?—A. Yes, sir.

Q. Who were they?—A. The board consisted of Mr. Weed—

Q. What office did he hold?—A. Supervisor; and Dan Hall.

Q. What office does he hold?—A. Justice of the peace.

Mr. ADAMS. I move to strike the last answer out as irrelevant and immaterial and object to the question on the same ground.

Q. Who else?—A. Another justice of the peace that was there—John Rogers.

Q. Was he a member of that board on that day?—A. Yes, sir.

Q. Who were the clerks?—A. Well, the township clerk—

Q. Who was he?

Mr. ADAMS. I object to this question as incompetent, irrelevant, and immaterial under the returns of the board as made to the county clerk of Eaton County of that election by the so-called election board under the evidence contained in Exhibit 16, and not the best evidence.

A. Mr. Pendle.

Q. Do you remember his given name?—A. I think A. H.

Q. What other clerk?—A. Well, John Hoyt.

Q. Who constituted the election board on that day?

(No answer.)

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and not the best evidence and calling for the conclusion of the witness.

A. The two clerks—the enrolling clerks were John Hoyt, Fred Fitzgerald, and S. B. Evans.

Mr. ADAMS. I move to strike out the answer as calling for the conclusion of the witness, not the best evidence, and as irrelevant and immaterial to the issue.

Q. What are your politics?—A. Well, sir, I am a Democrat.

Q. What are the politics of S. B. Evans?—A. He is a Democrat.

Q. Has S. B. Evans been supervisor of that township for a number of years?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and not the best evidence.

A. He has; yes, sir.

Q. On which ticket was he elected when he was elected supervisor from the township of Bellevue?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial; not the best evidence and calling for the conclusion of the witness.

A. He has always been known as a Democrat; he was nominated on that ticket.

Q. Did you see anything that occurred under your observation at that election in that precinct that was in any wise fraudulent and dishonest?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

A. Why, I don't know as I did; no, sir.

Q. They counted up the votes, and as far as you saw it, it appeared to be—as far as you observed—a good, straight, honest count of the votes cast?—A. I couldn't swear to that at all.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

Mr. MAYNARD. I am asking what it appeared to be to him.

Mr. ADAMS. That would make no difference.

WITNESS. I have answered your question; I didn't watch the tally sheet very closely.

Q. But you didn't see anything wrong, did you?—A. Oh, no, sir.

Mr. ADAMS. Same objection as to the last question.

WITNESS. I answered it before.

Q. How long have you known Orin Kimberly?—A. Ever since I have lived in Bellevue; I knew him first when he lived in Charlotte.

Q. How long has he been blind to your knowledge?—A. Oh, I couldn't tell you exactly; 20 or 25 years.

Q. He is a well-known citizen in Bellevue?—A. Yes, sir.

Q. Was he a popular and well-loved citizen by you business men there in the city for a good many years?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. Yes, sir; he was a good, kind man.

Q. This Abraham Hoyt was an old lifelong friend of his, was he not?—A. Why, I don't know anything about their friendship.

Q. You have known him for a good many years; they were closely acquainted with each other?—A. They lived close together.

Q. You didn't consider it anything strange or out of the way that Abraham Hoyt should help his blind friend get to the polls, did you?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. I would lead a blind man myself.

Q. You didn't think there was anything wrong about that?—A. No, sir.

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial what he thought; his opinion is not evidence.

Q. Mr. Johnson, was there anything wrong in Mr. Hoyt assisting Orin Kimberly to go to the polls on this occasion that you have described?

Mr. ADAMS. The same objection as before.

A. Why, no; I didn't think so.

Q. Did you see anyone give Mr. Kimberly a ballot to vote?—A. No, sir; I did not.

Q. You spoke or stated that at some place or some time Abraham Hoyt told you that he went and dug potatoes for a man so the man could go to the polls and vote; was that the statement you made?—A. Yes, sir; he told me so.

Q. Where was that?—A. Well, now, I couldn't tell you; it was in some store where plenty could hear it.

Q. Since this election?—A. Yes, sir; since the election.

Q. What was the name of the man?—A. I told you I didn't know what the man's name was.

Q. You don't know the name of the man?—A. No, sir; he told the name of the man; it was somebody that lived in the village.

Q. Who was present at this conversation?—A. Now, I couldn't tell you.

Q. Can you give me the name of anyone that was there?—A. No, sir; I could not.

Q. Can you give the place?—A. I don't care a snap, only he said it.

Q. Can you give the place?—A. No, sir; I can't tell you. It might have been in his own office.

Q. Are you sure it was this year? You might be mistaken about that.—A. I guess not; it was not this year. It was last year; it was in November.

Q. Can you tell the date when he said it?—A. No, sir.

Q. Or anywhere near?—A. No, sir.

Q. Within some weeks?—A. Well, it was along in November when we were talking about the election.

Q. I would like to have you fix the date if you can.—A. That I can't do; I can't do it.

Q. It didn't make very much of an impression upon your mind?—A. I paid no attention to what he said; I didn't care.

Q. Can you give the exact language?—A. Why, he was telling how he worked. I don't want to tell it all, because it might reflect upon the other candidate. I don't want to say a word.

Q. I am not asking you for anything that includes any other candidate; I am asking for this particular language. You say he said he went and dug potatoes so the man could go to the polls and vote?—A. He did.

Q. Have you given the exact language?—Give it again.—A. Well, sir, he said he went and dug potatoes for a man so he could go and vote for John M. C. Smith.

Q. Was that after the November 5 election, 1912, or was it some other election he did that?—A. It was last November; November 5.

Q. He said it was?—A. Yes, sir.

Q. You so understood him?—A. Yes, sir.

Q. You can't tell where the place was, nor the date nor who was present, can you?—A. No, sir; I could not.

Q. Do you know what time of the day this conversation took place?—A. Well, sir, it was daylight; I know that. I would not have been there if it hadn't been.

Q. You don't go out nights?—A. No, sir.

Redirect examination by Mr. ADAMS:

Q. Mr. Johnson, did John L. Hoyt act as one of the clerks at that election that day?—A. Yes, sir.

Q. Do you know how that John L. Hoyt was, if at all, related to this A. B. Hoyt?—A. He was a son.

Q. Who is postmaster now in Bellevue?—A. Well, sir, we have no postmaster. The postmaster has resigned.

Q. Was this John L. Hoyt, do you know, a candidate for the Bellevue post-office just prior to this November 5, 1912, election?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. He was; yes, sir.

Q. Now, was it after or before the election that you had that talk about the potato matter with the father of this John L. Hoyt?—A. It was since election.

Q. What Hoyt—you said in your answer, rather, to Mr. Maynard—that A. B. Hoyt said something to you about some candidate. Now, what candidate's name did he use when he said that?—A. Why, he said that John M. C. Smith had turned him right down after all his work and handed in the name of Mr. Kimberly—M. H. Kimberly.

Q. For what?—A. For postmaster.

Q. That is what A. B. Hoyt told you after election?—A. Yes, sir; he even went on and said he wrote a letter to him.

Q. Who did?—A. Mr. Hoyt.

Q. Wrote a letter to whom?—A. Why, John M. C. Smith.

Mr. MAYNARD. I object to that and move to strike out the conversation as incompetent and immaterial.

Q. Can you say that Mr. Smith had written a letter to Mr. Hoyt?—A. He didn't say.

Q. This man that acted as clerk there, John L. Hoyt, do you know what his politics were on that election day and before?—A. Yes, sir.

Q. What?—A. Republican; a straight Republican board.

Q. This man M. D. Rogers, you spoke of his being a justice of the peace; do you know what his politics were on that election day and before that election day?—A. Republican.

Q. Who was the other justice of the peace you mentioned?—A. Dan Hall.

Q. D. L. Hall, was it?—A. D. N., isn't it?

Q. What is his first name?—A. Daniel.

Q. Do you know what the politics were of that Hall on that election day and before that election day?—A. Republican.

Q. How near to the booth did A. B. Hoyt come with this man Kimberly on that day?—A. Inside of my gate.

Q. How close to the booth were he and Kimberly together?—A. Hoyt led him up a short alleyway to the second booth, and Hoyt opened the door himself. I think Dan Hall went in the booth with him, but whether Hoyt went through that booth and out on the other side around that way, I don't know where he went, or whether he went back of the board. I had all I could attend to watching the—

Q. Do you know what the politics of this blind man, Mr. Kimberly, that you saw that day had been before that election day?—A. He has always voted the Democratic ticket.

Q. In making your answers to the questions that were put to you by Mr. Maynard on your cross-examination, when he asked you whether there was anything fraudulent or dishonest occurred there on that election board that day, I wish you would state whether you know what the law designates as fraudulent or dishonest acts in connection with election.

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. I never have read the law in regard to these new elections.

Q. Did you ever read the decisions of the supreme court of the State of Michigan defining what is fraudulent or dishonest with reference to the conduct of an election board?—A. No, sir; I have not.

Q. You were asked what you thought about certain acts, whether you thought anything occurred there that was fraudulent or dishonest or out of the way there on that day. Now, I ask you whether at the time A. B. Hoyt led this blind gentleman, Mr. Kimberly, up to the booth and came within the railing after he had been in that voting place and voted on that day, whether you thought that was a proper act on the part of Mr. Hoyt?

Mr. MAYNARD. I will object to that; it is not proper redirect examination of the witness, and it is a misstatement of what I asked him, as the record will show, and it is incompetent and immaterial.

Mr. ADAMS. In what respect is it what you didn't ask him?

Mr. MAYNARD. I asked him whether he saw anything that appeared to him to be wrong in the canvass of the votes, and he testified, first, that he could not

swear to anything at all, and finally he said, as I remember the testimony, that he didn't see anything or notice anything.

Q. (Last question read.)—A. Why, I didn't think it was; I thought he was out of his place, and if I could got hold of him I would have pulled him out, but he got past me. •

Recross-examination by Mr. MAYNARD:

Q. How far was he from you when you saw him go through the gate?—A. He was right at the gate; I had hold of Mr. Kimberly trying to get him by; it was a narrow gate and Mr. Hoyt slipped in ahead of him.

Q. I thought you said Mr. Hoyt had hold of his other side?—A. He led him up to the gate, but there was no booth empty at that time and they had to stand there a little while. Finally there was an empty booth and I opened the gate and says, "Orin, you can come in now," at that he passed by on the other side.

Q. Did he have hold of Mr. Kimberly?—A. When he went by; no, sir.

Q. Whom do you mean by "him" passing by?—A. I meant Mr. Hoyt on the opposite side.

Q. You said he led him up to the second door?—A. I think it was the second door; he stopped there and said he had agreed to see Mr. Kimberly through.

Q. Did you see Mr. Hoyt lead Mr. Kimberly up to the second booth?—A. I did.

Q. You had let go of Mr. Kimberly?—A. Good land, he was 10 feet from me.

Q. How far did you lead him up that aisle?—A. I passed him just through the gate; I didn't go into the aisle at all.

Q. Mr. Hoyt led Mr. Kimberly to the second booth?—A. Yes, sir.

Q. You don't know what became of Mr. Hoyt after that time?—A. No, sir; he vanished.

Mr. ADAMS. You said Mr. Hoyt didn't come back through your gate?—A. No, sir; he didn't pass me.

WILLIS A. CASE, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Casey, where do you reside?—A. In Carmel Township.

Q. In Eaton County, Mich.?—A. Yes, sir.

Q. How long have you lived there?—A. All my life.

Q. What is your age?—A. I am 51.

Q. What were your politics; what party, or with what party, rather, were you affiliated—political party I mean—on the 5th day of November, 1912?—A. The Republican Party.

Q. Were you or not interested in behalf of the Republican Party ticket up to and including the completion of the election on the 5th day of November, 1912?—A. Yes, sir.

Q. Did you vote in the township of Carmel on the 5th day of November, 1912?—A. Yes, sir.

Q. What time in the day did you vote at that election place?—A. I couldn't tell you exactly, some time before noon; I couldn't give you the hour.

Q. You voted No. 16, didn't you?—A. I couldn't tell you the number.

Q. That is your name there. W. A. Case, on the list of voters?—A. Yes, sir.

Q. No. 16, isn't it?—A. Yes, sir; I think so. I can't see very good without my glasses.

Mr. ADAMS. There is no question about that is there, Mr. Maynard?

Mr. MAYNARD. No, sir.

Mr. ADAMS. That he voted No. 16 at that election?

Mr. MAYNARD. That is what the book says.

Q. You voted in the forenoon of that day?—A. Yes, sir.

Q. About what hour?—A. Well, I couldn't give the hour; I suppose along toward 9 o'clock; between 8 and 9 o'clock; I wouldn't swear to the hour exactly; I don't remember.

Q. Do you know who acted, at the time of your voting there, as inspectors of that election?—A. I have attended so many elections I will get mixed up on that; I think Hulburt Shaver.

Q. Was there a man named Griffin acting as inspector?—A. He was the supervisor of that township.

Q. Had you been around in that voting place that morning before you voted?—A. I think I just stepped in and hung up my coat, then passed out when I came in the morning.

Q. After you voted did you stay there in the voting place?—A. Not until the votes commenced to be counted.

Q. When did they begin to count the votes there that day?—A. I don't know; between two and three in the afternoon, I think.

Q. How long were you in there just before they commenced counting, about 2 or 3 o'clock that afternoon?—A. When they commenced counting I was there all the time after that.

Q. How long did you stay there after they commenced counting?—A. Until the vote was counted.

Q. What time did they conclude the count?—A. I think somewhere about 11 o'clock that night—along about that time.

Q. When you voted did you ask anybody there how the vote stood?—A. I asked several times the number of votes cast; that is all.

Q. When you voted?—A. No, sir; not when I voted, but during the daytime—how many votes had been polled.

E. A. JOHNSON, recalled for further cross-examination, testified as follows:

Examined by Mr. MAYNARD:

Q. Mr. Johnson, when you organized the board in the morning—when the board was organized in the morning there in Bellevue precinct—was the oath of office administered to you orally and afterwards you signed the oath?—A. It was to all of us as we stood there.

Q. You all held up your hands?—A. Yes, sir.

Q. And afterwards you signed the certificates?—A. Yes, sir.

Redirect examination by Mr. ADAMS:

Mr. ADAMS. I move to strike that out on the ground that it is incompetent, irrelevant, and immaterial and not the best evidence.

Q. Who administered the oath to you?—A. I was trying to think.

Q. Dan Hall?—A. I think so; I think it was Dan Hall.

Q. Hadn't Mr. Hall acted on that board before?—A. Yes, sir.

Q. Do you know whether anybody administered the oath to Dan Hall that day?—A. I couldn't tell you.

Q. You don't know of any oath being administered to Dan Hall that day, do you?—A. No, sir.

Q. While you were there?—A. No, sir; I do not.

Q. Was there any oath administered by anybody to Dan Hall before he began to act on that board of election?—A. I think not.

Recross-examination of Mr. MAYNARD:

Q. Who was the other justice of the peace?—A. Mr. Rogers.

Q. Did he administer the oath to you?—A. No, sir.

Q. He didn't to anyone that you know of?—A. No, sir; he held up his hand with the rest of us.

WILLIS A. CASE, recalled for further examination on the part of the contestant, testified as follows:

Examined by Mr. ADAMS:

Q. Now, when they began counting there in the afternoon, Mr. Case, who did the counting of the votes?—A. I was not in the house at that time, but when the clerk came, in the first place, he took down the vote.

Q. Do you know who that was?—A. I think it was Mr. Clements, at that time the challenger of the Democratic Party, read the ballots.

Q. He read the ballots?—A. Yes, sir.

Q. He handled the ballots and read them?—A. He offered to read them and I watched him do it.

Q. He read them out aloud?—A. So we could both hear to the other table.

Q. Were you acting there?—A. I was acting as challenger for the Republican Party.

Q. When they came to a ballot that had John M. C. Smith's name on it they would call off, Smith for Congress?—A. Yes, sir.

Q. And the other candidates that were voted for on the ballot, they would be called off aloud so you could all hear?—A. Yes, sir.

Q. Who else acted on that board while you were doing that counting before the polls closed at 5 o'clock besides yourself and Mr. Clements?—A. Cortez Cushing.

Q. What did he do?—A. He read the votes.

Q. I thought you said one of the challengers read the tickets.—A. He was a challenger.

Q. He was the challenger for the Democratic Party?—A. Yes, sir; he was deputized to read the votes.

Q. Who deputized him?—A. I don't know; I was not in there at that time.

Q. You don't know, then?—A. That is what they said.

Q. Of your own knowledge, you don't know whether he was deputized?—A. I couldn't say as to that; no, sir; I happened to be out doors at that time.

Q. Were you sworn to act as an inspector there of that election?—A. I was not an inspector of the election.

Q. Were you on that day, before you began to assist in counting those votes, sworn by anybody? Did you take an oath there that you would perform the duty of counting those ballots?—A. I didn't understand I had to.

Q. You were not sworn to act there in counting those ballots?—A. No, sir.

Q. Were you sworn as a challenger?—A. I was elected as a challenger.

Q. Were you sworn by anybody to act as a challenger at that election?—A. Not at that election; no, sir.

Q. Did you perform whatever duties you did perform in assisting in counting those ballots without taking any oath to act in that capacity?—A. I didn't assist in counting the ballots—only watched them counting them.

Q. Did you read any names off?—A. No, sir.

Q. Who read the names off?—A. Cortez Cushing, the Democratic challenger.

Q. Did he read all of them that was read after you began to count at 2 or 3 o'clock until the time the polls were closed?—A. Yes, sir.

Q. Who took down and kept the talley sheet?—A. I think Mr. Clements did.

Q. Was he sworn in to act upon that board?—A. I couldn't say whether he was or not.

Q. Was Mr. Clements an official of that township?—A. He had been clerk before; he was an ex-clerk. They said he was deputized; that is all I know about it.

Q. Do you know of any oath having been administered to Mr. Clements?—

Q. That day?—A. No, sir.

Q. If that was done, it was done before you came in there?—A. Yes, sir.

Q. Who else, if anybody, besides those you have mentioned, assisted in counting after you began the count there about 2 or 3 o'clock that day up to the time the polls closed at 5 o'clock?—A. I don't remember of anyone.

Q. Those are the only ones you can recollect?—A. I think so; I wouldn't say positively but what one of the clerks commenced to tally at the very last, but I will not say as to that.

Q. Gordon Griffin was supervisor of that township at the time of that election?—A. Yes, sir.

Q. Who were the justices of the peace in that township at that time?—A. William Huber and Hurlburt Shaver, I think they were both justices of the peace.

Q. Who was the clerk in that township on that day?—A. DeWitt Cole.

Q. D. C. Cole?—A. Yes, sir.

Q. Were either of the justices of the peace there that day?—A. They were there, the two justices of the peace were there that day; one was an instructor.

Q. Were they there in the morning when you voted?—A. Yes, sir.

Q. Mr. Griffin, Mr. Shaver, and Mr. Huber, when you voted?—A. I will put one qualification, Shaver I don't remember. Huber and Griffin were there; Mr. Jones can tell whether Shaver was a justice of the peace or not. I can't hardly remember that.

Q. Were you there when the ballot box was opened and the ballots taken therefrom and the vote commenced to be counted at 2 or 3 o'clock?—A. I didn't know it until after I got in; I don't know whether they were sworn or whether the ballots were emptied out; when I got there they were emptied out.

Q. Where?—A. On the table.

Q. All of them emptied out of the box?—A. Yes, sir; and the box turned bottom side up.

Q. Did they use that ballot box again for depositing ballots in or did they have another one?—A. They used the same ballot box.

Q. Did they seal it—lock it and seal it?—A. I couldn't tell you; I couldn't swear to that; I didn't watch for those things.

Q. I suppose you were right near the men when the counting began at 2 or 3 o'clock in the afternoon, who were carrying on the election, receiving the votes and passing out the ballots?—A. Just out of the way in the corner, back in the corner a little bit.

Q. How far from the board?—A. We were not more than—only just room to pass between them and the table where we were.

Q. Two or 3 feet?—A. I think so.

Q. As you were counting and the voters coming in and casting their ballots, the votes for the different candidates were being called off by you gentlemen who were counting, when the voter went up to register his ballot, the voter was near enough to you gentlemen so that in calling off the ballots he could hear what was called off?—A. I suppose so; Mr. Griffin stood maybe 3 feet from the table, they passed the other side of him.

Q. Mr. Griffin was receiving the ballots?—A. Yes, sir.

Q. Who passed out the ballots after you began counting?—A. I think Mr. Shaver; he was an inspector there that day.

Q. How close did Mr. Shaver stand in passing out the ballots to the voters and you gentlemen while you were conducting that count?—A. It must have been better than 20 feet.

Q. All in one room?—A. Yes, sir; all in one room.

Q. Did you finish counting those ballots you started to count at 2 or 3 o'clock that afternoon before the polls closed?—A. No, sir.

Q. How many ballots had you counted after you commenced at 2 or 3 o'clock that afternoon up to the time the polls closed that day?—A. I couldn't say as to that.

Q. How many ballots were there in the box when you emptied and began counting at 2 or 3 o'clock that afternoon?—A. I couldn't give you the exact number, I can approximately; I think there were about—I can't give that either—about two-thirds of the vote in, I think.

Q. Were you there when the counting was concluded about 11 o'clock that night?—A. Yes, sir.

Q. After the polls closed at 5 o'clock—or did they close at 5 o'clock that day?—A. I think 5 o'clock.

Q. After they closed, did you or not go ahead and assist in the count?—A. I merely stood there watching the count.

Q. When the votes were all counted what was done with the ballots?—A. They were all put back in the boxes.

Q. All in one box?—A. No, sir; I think some in the box; I don't know what they did with the whole of them; I was not watching that.

Q. Who kept the tally book in the afternoon when you commenced the counting?—A. I think it was Mr. Cole; I don't remember who the other clerk was—Mr. Cole, I know, D. C. Cole.

Q. He kept it in lead pencil?—A. I think not.

Q. Are you sure about that?—A. No, sir.

Q. I show you Exhibit 17, which is entitled "Tally sheet book of the general election held November 5, 1912, Carmel Township, Eaton County." That shows that the tally book was kept in lead pencil, was it not?—A. Yes, sir.

Q. And the figures carried out in lead pencil?—A. I was mistaken as to that question, I thought it was.

Q. I am talking about the tally sheet.—A. That was kept in lead pencil.

Q. The tallies here were put down in lead pencil, then carried out in the final columns, under straight votes and split votes, in pencil, for Representative in Congress, were they not, as shown by that book you are now looking at?—A. Yes, sir; I should judge so.

Q. They were?—A. I would call that pencil marks, all right enough.

Q. Did you know who kept Exhibit 17 that day?—A. I couldn't tell you.

Q. Who made the tally figures on that book I have just called your attention to?—A. I couldn't tell you who kept it.

Q. You saw them keeping that tally book there that day?—A. Do you mean after the board commenced to count or before?

Q. When they began at 2 or 3 o'clock.—A. I think that Mr. Clements did that work.

Q. You sat there and saw them keeping these tally books?—A. Yes, sir.

Q. To the best of your recollection, Mr. Case, were the ballots as called off recorded in this tally book in lead pencil when they began that count at 2 or 3 o'clock that afternoon?—A. From that book I should say it was a lead pencil; I don't have any other remembrance.

Q. Now Mr. Clements was the only man who was keeping the tally sheet that afternoon up to the time the polls closed?—A. I wouldn't say to the last that the other clerks did not take hold of it.

Q. I mean up to 5 o'clock Mr. Clements was the only man?—A. It might have been a short time before that, no votes were cast for an hour or so, and it seems to me the other clerks did, but I couldn't say.

Q. Most of the time up to 5 o'clock did Mr. Clements keep the tally sheet?—A. Yes, sir.

Q. He was the only man up to 5 o'clock that kept the tally sheet mostly?—A. Yes, sir.

Q. Do you know what was done; if any other tally sheet book was kept what was done with it?—A. No, sir.

Q. There was but one kept in the afternoon up to the time they closed the polls—one tally sheet book?—A. There was but one tally up to the time the polls closed most of the time.

Q. But one kept—one book?—A. One book; it seems as though to me for a time—for a while toward the last—that Mr. Huber did, but the books ought to show for that; it seems to me he acted a part of the time—at the latter part of the time—both of them acting at that time.

Q. He was acting as inspector?—A. Yes, sir; I think he took hold after a time—after the tickets had all been marked—but I would not be positive about that.

Q. You are not sure about that?—A. No, sir; but I think there were two for a part of the time.

Q. I suppose people came along when you were counting and watched the counting some?—A. Oh, they went right along through.

Q. Some of them stopped there?—A. I don't know.

Q. And looked on?—A. I don't know.

Q. You knew what the vote was there as it was going along—how the thing was running I suppose?—A. Do you mean when they commenced to count?

Q. Yes. A. Yes, sir; as near as I could remember in my mind.

Q. You could carry in your mind how many votes were being received for John M. C. Smith and how many were received for Claude S. Carney?—A. I didn't keep any track in that way.

Q. You carried in your mind whether Smith was ahead or Carney?—A. My interest was in one man as much as the other.

Q. You did that as far as the different candidates were concerned?—A. On the straight tickets I could tell, that is all.

Q. You could see the tally book in front of you on the table that was being kept?—A. It was just across from me on the table.

Q. You could see what was on the book?—A. I didn't watch that.

Q. You could see what was on the book?—A. I was watching the reading of the ballots.

Q. You were keeping track of it to find out how the election was going?—A. No, sir; it is always proper to have a watch kept; you can make a mistake very easily and I was there if a ballot was wrong to challenge that ballot.

Cross-examination by Mr. MAYNARD:

Q. Had they counted any ballots when you took your place there to watch the count in the afternoon?—A. They had not counted any.

Q. Who did that?—A. When I got in there Mr. Clements was there and Cortez Cushing.

Q. Those were the two men who took charge of the ballots?—A. Yes, sir.

Q. Were the inspectors there?—A. The full board was there.

Q. The full election board was present?—A. Was present watching the election.

Q. Did you see them open this ballot box?—A. No, sir.

Q. When you went in did you see them emptying the ballot boxes?—A. Yes, sir.

Q. Who was it?—A. The supervisor.

Q. Who was that?—A. Mr. Griffin.

Q. Who was present?—A. The board.

Q. Who else?—A. Whoever was outside in the hall; I can't remember.

Q. Do you know whether there were many there or not?—A. I think there was quite a good many there; quite a crowd.

Q. Did you see any of them at the same time you were counting standing next to the railing?—A. There was lots of them standing along the railing.

- Q. Where did this voting take place, this election?—A. In the town hall.
- Q. Which side of the booths was the ballot box placed?—A. A little southwest of the booths.
- Q. Which way did the building face?—A. It faced the south.
- Q. The building run north and south?—A. The building run north and south.
- Q. The front door to the south?—A. Yes, sir.
- Q. Which way did the railing run?—A. East and west.
- Q. Across the building?—A. Across the north end of the building. It was partitioned off a little less, probably, than one-quarter of the building.
- Q. The front of the railing is open to the public?—A. Yes, sir.
- Q. Which end of the railing was occupied?—A. The east.
- Q. Which way did it face inside?—A. West.
- Q. To the west end of the railing?—A. Yes, sir.
- Q. Which way did the booths run?—A. East and west.
- Q. How many did you have?—A. Four.
- Q. Where was the inspector placed that delivered the ballots to the voters?—A. To the east gate.
- Q. Where did the voter go out on the other side of the booths?—A. He went in on the south side of the booths and came out on the north.
- Q. Was there room at both ends of the booths to pass around the booths?—A. Not at both ends. They were against the wall at the east end. You could go into the booths and pass out to the north.
- Q. Where did they deposit the ballots?—A. Southwest of the booths a little bit.
- Q. Then the inspectors both, the one who delivered the ballots and the one who received the ballots, could see each other?—A. No, sir; the inspector—the one who gave out the ballots—was to the east side and the supervisor and clerk to the west side, as near as could be.
- Q. The booths run east and west?—A. Yes, sir.
- Q. They both were a little in front of the booths?—A. Yes, sir.
- Q. There was nothing between the inspectors, nothing to hinder their view of each other?—A. No, sir.
- Q. Where did the clerks sit; between them?—A. At the table just about south of the west end of the booths.
- Q. They sat near the one who received the ballots?—A. Yes, sir. The box was just west of the table, and the man who took the ballots was west of that.
- Q. Where did the table sit that contained the ballots that those men were counting?—A. On still west of where the supervisor sat, next to the wall.
- Q. Was it north of the supervisor or straight west?—A. Perhaps a little north.
- Q. It was in that corner, the northwest corner?—A. So as to be handy with the bookcase.
- Q. How many were there watching this count in the afternoon?—A. Three, most of the time, I think.
- Q. Who were they?—A. Mr. Clements, Mr. Cushing, and myself.
- Q. Mr. Cushing is a Democrat?—A. Yes, sir; the Democratic challenger.
- Q. He was appointed challenger on that occasion for the Democratic Party?—A. Yes, sir.
- Q. And you were for the Republican Party?—A. Yes, sir; I took the position because they did not put in any challenger.
- Q. You watched the reading of the ballots by Mr. Cushing?—A. Yes, sir.
- Q. You say you did that for two purposes, and one was to see if there were any ballots that were illegally marked?—A. Yes, sir; that is one thing I was there for.
- Q. You observed whether they were correctly read?—A. Yes, sir.
- Q. Now, did Mr. Cushing read those ballots as they were delivered to him, correctly?
- Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.
- A. Yes, sir; I think he did, if he didn't make any mistakes.
- Q. Did you in all that afternoon observe a mistake that Mr. Cushing made in reading those ballots when he was tallying?—A. No, sir.
- Q. Are you acquainted with the big bulk of the voters who cast their ballots there at that election?—A. A great many of them; some newcomers I am not acquainted with.
- Q. This board of election, how long have you known the members of that board?—A. Well, it has been a good many years; almost since I can remember.

Q. Do you know what the reputation of Mr. Griffin is in that township for being an honest, upright man?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not a proper question.

Q. Have you the means of knowing what his reputation is in that community as to being an honest, upright man of integrity?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, calling for the conclusion of the witness and not calling for any fact, nor does it give any means of measuring what his means of knowledge are.

Q. Have you the means of knowing?

Mr. ADAMS. The same objection.

A. Only from living up there and being acquainted with him all his life.

Q. Are you acquainted in the community in which he resides?—A. Yes, sir.

Q. Did you ever hear him questioned as not being an honorable, upright man and a man of integrity in that community?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and not the proper way to show what counsel seeks to show by the question under any rule of evidence.

A. I never heard a word against him.

Q. Is he one of the most prominent farmers and well-known men in that township?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. Do you know William Huber?—A. Yes, sir.

Q. How long have you known him?—A. Just as long as I can remember back.

Q. Where does he live; what township?—A. In Carmel.

Q. How long has he lived there?—A. He has been away some, but that has been his home for most of the time.

Q. For how long?—A. Well, I don't know for that; it has been a good while; I think I can remember him from a boy.

Q. What is his age now?—A. I don't think he is quite as old as I am; I think between 45 and 50.

Q. Do you know whether he has held any positions in that township?—A. Yes, sir; he has been justice of the peace for a good many years; I know that.

Q. Have you the means of knowing what his reputation—general reputation—is for honesty and integrity and being an upright citizen?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, not calling for any fact and in violation of every rule of evidence applicable to such question and a conclusion.

A. I have the same means I have of knowing the rest of them—by living in the same township with them.

Q. Did you ever hear his general reputation assailed or called in question by any citizen of the township?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. No, sir.

Q. Are you acquainted with Hurlburt Shaver?—A. Yes, sir.

Q. How long have you known him?—A. I think he has been a boy in Carmel the same as I was.

Q. You have known him since his boyhood?—A. Yes, sir.

Q. What is his business?—A. He is a farmer.

Q. Is Huber a farmer?—A. Yes, sir.

Q. And Mr. Griffin is?—A. Yes, sir.

Q. Is Mr. Cole a farmer, too?—A. Yes, sir.

Q. How long has Mr. Shaver been a justice of the peace in that township?—A. He has been several terms and has been clerk and treasurer there.

Q. Of the township?—A. Yes, sir.

Q. Have you the means of knowing what the general reputation of Hurlburt Shaver is in that community for honesty, integrity, and good citizenship?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, calling for the conclusion of the witness, not calling for any fact, and is in violation of every rule of evidence applicable to the subject matter inquired about.

A. The same as the rest; I have known him ever since he was a boy.

Q. Did you ever hear any question about his honesty or integrity in that community?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and hearsay.

A. No, sir.

Q. In watching this election did you observe anything in the conduct of that election which restricted the privilege of every honest voter to vote as he saw fit for the candidates on the tickets?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

A. No, sir.

Q. So far as you observed, was that election an honest election.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness as to what the law is.

A. Yes, sir.

Q. In watching that election and the count during the afternoon, were all the votes which were cast in that precinct for Claude S. Carney credited to him?—

A. I think they were.

Q. Were any votes credited to John M. C. Smith which were not cast at that election for him in that precinct?—A. I think not, sir. I didn't see anything of that.

Q. Now, when Mr. Cushing was reading those ballots did he read all of the ballots for each candidate cast for him on the entire party ticket of each party?—A. Yes, sir.

Q. Was that a large ballot?—A. A large ballot.

Q. Were there a good many candidates on the Republican ticket for Presidential electors?—A. Yes, sir.

Q. How many party tickets were there on that ballot?

Mr. ADAMS. Objected to as irrelevant and immaterial and not the best evidence.

A. I think six; I will not be sure.

Q. Can you name them?—A. Republican, Democrat, Progressive, Socialist, and Socialist Labor, if I remember right, and Prohibition.

Q. When a ballot was cast for the Republican ticket and was what you call a "split" ticket, did Mr. Shaver read the entire list of names after the electors?—A. Mr. Cushing?

Q. Yes.—A. After the electors; yes, sir.

Q. Each man that received a ballot clear down through?—A. Yes, sir.

Q. Do you think it would have been possible for any man to hear him read to carry in his mind how many votes each man on that long ticket was given?—A. I think not.

Q. Mr. Cushing didn't make any difference when reading between John M. C. Smith's name and Claude S. Carney's name, to show that he had any choice about either man?—A. Not a bit.

Q. Did he read them in a perfectly honest, square manner as far as you observed?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, calling for the conclusion of the witness and not for any fact. It is a question for the court to determine whether honest or not and not for this witness to give his opinion.

A. Yes, sir.

Q. Did you hear any attempt by Mr. Cushing to emphasize any particular candidate's name or give any advantage to any candidate whose name appeared on any one of those ballots that day?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. No, sir.

Redirect examination by Mr. ADAMS:

Q. Where did Mr. Cushing stand; how far from you when he read the ballots?—A. I stood right back of him, looked over his shoulder.

Q. All the time while reading?—A. Yes, sir.

Q. You stood back of Mr. Cushing?—A. Yes, sir.

Q. You stated that all the votes that were cast for any candidate on any of those tickets were correctly counted for the candidates for whom the votes were cast that day, did you?—A. Yes, sir.

Q. How do you know whether the man that was keeping the tally sheet reported it correctly or not?—A. I stood there reading them over.

Q. How do you know whether he registered them correctly as they were called off or whether he did not?

Mr. MAYNARD. I object to this manner of cross-examining their own witness; there is nothing to show that he is a hostile witness, and we object to the

manner of reexamination taking the form of a cross-examination. And we have another objection I wish to make. It will appear from the record that every witness that is placed upon the stand is examined on direct examination, and when cross-examined the attorney immediately takes the witness and proceeds on matters which he should have exhausted him on in his direct examination, violating all rules of the Federal courts, that he should exhaust the witness before he leaves him.

Mr. ADAMS. I suppose you know that that rule doesn't apply to any new matter brought out.

Mr. MAYNARD. This way of examining the witness has continued from the beginning; he called the witness and went into the examination of the count and what he did and the whole thing on his direct examination, and now after he has heard the cross-examination, he commenced immediately to examine him upon that which he should have fully gone into in the first place.

(Last question read.)

A. I couldn't tell you; I couldn't watch him.

Q. You simply watched the ballot as Mr. Cushing read it?—A. Yes, sir.

Q. Whether that tally book correctly shows the votes as they were called off by Mr. Cushing and put down on the tally book you don't know?—A. Only he kept count of them all the time, and when he came to five he counted five.

Q. Mr. Cushing kept the count?—A. No, sir; the tally clerk.

Q. Mr. Cushing kept calling them off?—A. Yes, sir.

Q. Whether the tally clerk put them down on the book correctly, just as they were called off, you don't know, do you?—A. I couldn't tell you that; nobody can tell that; you can't tell that at any election.

Mr. ADAMS. I move that what they could do at any election is a conclusion of the witness and is incompetent and irrelevant and should go out.

Q. I understood you to say on your cross-examination you were not appointed a challenger by any political party?—A. I am the challenger of the township committee.

Q. You were chairman of the Republican township committee at the time of that election?—A. Yes, sir.

Q. Did you appoint yourself?—A. Yes, sir.

Q. Did you hand in any certificate to the board that you had appointed yourself as challenger in that election?—A. No, sir.

Q. You didn't do that?—A. No, sir; I didn't see anyone hand any in.

Q. I ask you whether you did. Did you personally on that election day, to the election board, hand them a certificate that you had appointed yourself to act as challenger for the Democratic Party at that election at that voting place?—A. No, sir.

Q. On that day?—A. No, sir.

Q. You didn't do that?—A. No, sir.

Q. So that you went in there self-appointed to act as challenger at that election; is that true?—A. That is true.

Q. You had been interested in the candidacy of John M. C. Smith for Congress prior to that election day?—A. Nothing more than any other man.

Q. You had been interested prior to that election day on the 5th day of November, 1912, on behalf of John M. C. Smith, Representative for Congress, on that ticket that was being voted at that election on that day?—A. I explained my position, no more than anyone else.

Q. You had been interested in his behalf and in his election?—A. No more than anyone else.

Q. You had been interested in his behalf and in his election?—A. The whole ticket.

Q. And with the whole ticket for him?—A. Yes, sir.

Q. Like everybody else on the Republican ticket?—A. That was my official place.

Q. How close was the voter to you when he handed in his vote to be voted that day, after he had marked it, to the booth?—A. I couldn't say exactly to that; it might have been 5 or 6 feet.

Q. When he received the ballot from the election board and took it to the booth to mark, how far was the voter from you when he received that ballot and took it to the booth?—A. I should think in the neighborhood of 20 feet.

Q. The only member of that election board who assisted, if anyone, on that day, aside from Mr. Cushing and Mr. Clements, was Mr. Huber, before 5 o'clock?—A. I think so.

Q. He was the only one who assisted in counting those votes after they commenced about 2 or 3 o'clock that day up to 5 o'clock on that day when the polls

closed, if any of the inspectors assisted besides Mr. Cushing?—A. I think Mr. Huber watched that vote a great deal of the time; I think he watched it most of the time.

Q. He was the only one of the election inspectors besides Mr. Cushing who did do that up to 5 o'clock after you commenced to count?—A. I couldn't say positively, as he worked on that until about 5 o'clock or half past 4 o'clock.

Q. He is the only one you have any recollection of?—A. Yes, sir; I couldn't mention any other man.

Q. Up to the time they got through counting, did any of the other inspectors recount those ballots that you gentlemen had counted up to 5 o'clock?—A. I couldn't say.

Q. You were there?—A. I couldn't say whether they were recounted or not.

Q. You were there until the count was completed?—A. Yes, sir; the count was going on that night; I was simply watching the new tickets that were cast after 2 o'clock.

Q. Then you don't know whether all the ballots that were voted for any candidate were correctly counted or not?—A. I don't know anything about the tally sheets.

Q. If you don't know whether any of those ballots you counted from 2 o'clock to 5 o'clock were again recounted after the board got through with the election, you don't know whether all that were cast there by the voters were correctly counted for the candidates for whom they were voted, do you?—A. I don't know what the tally clerks did at all.

Q. Is that the only answer you can make to the question?—A. Yes, sir; that is all.

Q. Was there more than one man reading the ballots after 5 o'clock?—A. No, sir; not the tickets.

Q. As far as your observation went or your recollection now goes, it is a fact, is it not, that when 5 o'clock came the ballots that you had counted from 2 o'clock to 5 o'clock that day were not again recounted by those members of that board who had not participated in the count of those ballots up to 5 o'clock of that day?—A. I couldn't say whether they were or not.

Q. You didn't see it done?—A. I didn't see it done; that is the reason I can't swear to it.

Q. Mr. Clements was a Republican, was he?—A. Yes, sir.

Q. And had been for some time?—A. Yes, sir.

Q. Mr. Huber had been a Republican for a great many years?—A. Yes, sir.

Q. And Mr. Cushing had been a Republican for a great many years?—A. Yes, sir.

Q. And Mr. Griffin had been a Republican for a great many years?—A. Yes, sir.

Q. And Mr. Shaver had been a Republican for a great many years?—A. Yes, sir.

Q. They were pretty strong local Republicans, and always had been?—A. Why, as they usually run, yes, sir; I guess they always split their tickets sometimes, but they were Republicans.

Q. Had Mr. Cushing been acting on that board on that day in any capacity that you observed before you commenced counting those ballots in the afternoon?—A. No, sir; he was just township clerk the year before.

Q. So when they began this count about 2 or 3 o'clock that day, he was the man to assist?—A. I suppose so; he was in there; I didn't see him called in.

(Whereupon a recess was taken until 1 o'clock p. m.)

WILLIS A. CASE, recalled, testified further as follows:

Cross-examination by Mr. MAYNARD:

Q. Which one of the board initialed the ballots?—A. Mr. Huber.

Q. When he was not engaged in initialing the ballots, was he watching the count during the afternoon?—A. Yes, sir; most of the time.

Q. Were you there when the board organized in the morning on the 5th of November last?—A. I was not.

Redirect examination by Mr. ADAMS:

Q. Were you subpoenaed as a witness?—A. Yes, sir.

Q. By whom?—A. By Mr. Carney.

Q. Personally?—A. By the sheriff.

Q. How many miles do you live from Charlotte?—A. About four and a half.

Q. Did the sheriff pay you your fees?—A. Yes, sir; \$1.35.

FRANK FORD, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the confestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Ford, do you hold any official position in the county of Eaton, State of Michigan?—A. I do.

Q. What?—A. County clerk.

Q. How long have you been county clerk?—A. Since the 1st day of January, 1913.

Q. As such clerk do you have the custody and possession of the election records showing the officers of the various townships and when elected in the county of Ea'on?—A. I do.

Q. I show you a book entitled "Election Record 21, Township of Eaton" on the back of that record and ask you whether that record is one of the records in your possession now as the county clerk of the county of Eaton, State of Michigan?—A. It is.

Q. Does that record or not show the different township officers elected at the April election in 1912?—A. It should.

Q. That is what it purports to show?—A. Yes, sir.

Q. The township elections in the State of Michigan are holden on the first Monday of April in each year?—A. They are.

Q. The township officers—supervisors, justices of the peace, and township clerks—are elected once a year only and at that election which, by law, is fixed to be held in April of each year?

Mr. MAYNARD. I object to that as incompetent and immaterial and not the best evidence.

Mr. ADAMS. Don't you concede that as a fact?

Mr. FRANKHAUSER. I don't know of any law requiring the county clerk to keep such a book.

WITNESS. I don't think there is any law requiring it.

Q. Mr. Ford, have you in your custody as county clerk of the county of Eaton the election returns from the townships showing who was elected as township officers at the April, 1912, election in the respective townships?—A. I think I have; I wouldn't state positively.

Q. Will you make a search in your office and find, if you can, all the returns from the county of Eaton of the election held in April, 1912?—A. The record of 1911 wouldn't show all the justices of the peace; they are elected every four years.

Mr. MAYNARD. We will consent that you may read from that book who the supervisors, justices of the peace, and township clerks of the respective townships in the county as they appear from that book, and we will make no question about the method of proof, but will object to the materiality of the testimony.

Mr. ADAMS. That testimony may be given from this record that has been referred to with like effect as if the election returns themselves were here and were offered in evidence.

Mr. MAYNARD. Yes, sir; we do that to shorten the record.

Q. With the concession made by counsel for the contestee, will you please to tell me and read from that record, beginning with the township of Bellevue—that is the first one in the record I think—who was elected as supervisor in the township of Bellevue at the April, 1912, election?—A. H. M. Weed.

Q. Who was elected as clerk in that township?—A. Charles A. Pendle.

Q. Who was elected as justice of the peace?—A. W. H. Gayton.

Q. Who were the justices of the peace, as shown by this record, in the township of Bellevue at the time of the November 5, 1912, general election that was held in this State of that township?—A. As far as this record shows, D. L. Hall and M. D. Rogers.

Q. Take the township of Benton and give me the information as to those officers I have just inquired about.

Mr. FRANKHAUSER. I would suggest that the witness make a list of those township officers and put it in evidence.

Mr. ADAMS. That will be all right.

Referring to Exhibit 18, one of the poll books of the general election held on November 5, 1912, in the first ward of the city of Eaton Rapids, county of

Eaton, on page 2, under the heading as follows: "Oaths of inspectors of election." is the following:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"FRED ROHRBACH.

"Taken, subscribed, and sworn to before me the 5th day of November, 1912.

"H. S. DEGOLIA, *City Clerk.*"

Mr. MAYNARD. We object to it as incompetent and irrelevant and not covered by anything in the notice of contest.

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability.

"J. J. HOLMES.

"Taken, subscribed and sworn to before me the 5th day of November, 1912.

"H. S. DEGOLIA, *City Clerk.*"

Mr. MAYNARD. The same objection.

Mr. ADAMS. I desire to have the record show that those are the only two certificates showing that any inspectors in that voting precinct were sworn to act as inspectors in that election in that voting precinct the 5th day of November, 1912.

Mr. MAYNARD. We object to that as incompetent and immaterial. There is nothing to warrant it in the notice of contest.

Mr. ADAMS. In the same exhibit under the heading "Oaths to clerks of election," on page 3, contains two separate certificates showing that Henry A. Rogers and Silas Godfrey took the oath to act in the office of clerks of the election held Tuesday, the 5th day of November, 1912, and each of said clerks, as appears by this exhibit, were sworn before H. S. DeGolia, city clerk.

Mr. MAYNARD. We object to that as incompetent and immaterial and not raised by the notice of contest.

Mr. ADAMS. I offer in evidence from this same exhibit the following:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"CERTIFICATE OF INSPECTORS.

"We do hereby certify that the foregoing poll list has been carefully compared with the duplicate poll list as required by law, and that all mistakes found in such poll lists have been duly corrected by us and that both said poll lists are now correct and agree with each other.

"In witness whereof we have hereunto set our hands at the first ward, city of Eaton Rapids, said county and State, this 5th day of November, 1912.

"HENRY A. ROGERS,

"SILAS GODFREY,

"J. J. HOLMES,

"FRED ROHRBACH,

"*Inspectors of the General Election, Held
on Tuesday, the 5th day of November, 1912.*

Mr. MAYNARD. The same objection.

Mr. ADAMS. This exhibit I just read from I desire to have the record show is contained in an envelope which is addressed "County Clerk, Charlotte, Eaton County, Michigan."

Mr. MAYNARD. The same objection.

Mr. ADAMS. I read into the record from the tally sheet book of the general election held November 5, 1912, township of Roxand, county of Eaton, Michigan, and desire to have the record show that on pages 12 and 13 of this tally sheet book, opposite "Representatives in Congress," there are no tallies whatever contained in this book, showing that the tally clerks did not enter upon this tally sheet book, Exhibit 19, any list of the votes as called off of the ballots

that were supposedly counted, and that under the head "Total straight votes," opposite the name of John M. C. Smith, candidate for Representative in Congress, appears in figures 101. Under the head of "Total split votes," opposite the name of John M. C. Smith, Representative in Congress, appears in figures 68. Under the head "Total votes received," opposite the name of John M. C. Smith, Representative in Congress, appear the figures 169. Opposite the name of Claude S. Carney, for Representative in Congress, under the head "Total straight votes," appears the figures 37. Under the head "Total split votes," opposite the name Claude S. Carney, Representative in Congress, appear the figures 24. Under the head "Total votes received," opposite the name of Claude S. Carney, for Representative in Congress, appear the figures 61.

I also desire to have the record show that this tally sheet book, Exhibit 19, does not show that there was any tally kept of this poll book of any of the votes, whether straight or split, for Claude S. Carney.

I am now reading from page 2 of Exhibit 20, under the head of "Oaths of the inspectors of election." This exhibit shows that each of the following-named persons, George E. Potter, Ed. Davis, Abraham Stinkle, and Burton J. Pumfrey signed the following certificate:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election, held on Tuesday, the 5th day of November, 1912, according to the best of my ability."

Each one of said persons were sworn by Loyal W. Davis. There is no showing on the record in what capacity L. W. Davis administered the oaths.

The record also shows, on page 3, under the heading "Oaths to clerks of election," that Robert D. Jackson and H. A. Williams signed the certificate, showing that they would discharge the duties of the office of election clerks at that election on November 5, 1912, according to the best of their ability. Each of said clerks, this record shows, were sworn before Loyal W. Davis, but there is no showing on the record in what capacity Loyal W. Davis administered the oath to those two clerks. The certificate of the inspectors at the conclusion of this Exhibit 20 is as follows:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"We do hereby certify that the foregoing poll list has been carefully compared by us with the duplicate poll list, as required by law, and that all mistakes found in such poll lists have been duly corrected by us, and that both said poll lists are now correct and agree with each other.

"In witness whereof we have hereunto set our hands at Hoytville, Grange Hall, said county and State, on the 5th day of November, 1912.

"GEORGE E. POTTER,
"BURTON J. PUMFREY,
"ABRAM STINKLE,
"ED DAVIS.

"*Inspectors of the general election*

"*Held Tuesday, the 5th day of November, 1912.*

Mr. ADAMS. I read into the record from the statement book, "General election, Exhibit 21, held Tuesday, November 5, 1912, at Roxand, Eaton County, Michigan," which contains a certificate showing that this exhibit contains a correct statement of the votes given in the township of Roxand, county of Eaton, at the general election held Tuesday, November 5, 1912. It is signed by George E. Potter, Burton J. Pumfrey, Ed Davis, and Abraham Stinkle, inspectors of election. I also offer in evidence page 2 of Exhibit 22, which exhibit is entitled "Poll book at the general election held November 5, 1912, township of Windsor, Eaton County, Michigan," showing that there is no certificate or oaths in this exhibit or in any other exhibit, or in any other record rather, of the election returns at that election in any of the files of these election returns in the office of the county clerk of Eaton County, showing that any inspector was shown as such to occupy or fill the position of inspector at that election as shown by this exhibit, as required by law.

Mr. FRANKHAUSER. It could not by any possibility show any such a thing; I presume the page shows for itself.

Mr. ADAMS. I offer it in evidence.

Mr. MAYNARD. We object to it as incompetent and immaterial.

Mr. ADAMS. There is no certificate in this exhibit showing that any inspector was sworn or subscribed any oath to act as inspector of that election in that township.

Mr. FRANKHAUSER. I suppose the book will speak for itself, but I object to that method of proving it.

Mr. ADAMS. I will read from page 2 under the heading "Oaths to inspectors of election."

Mr. MAYNARD. We object to it as incompetent and immaterial; there is no law requiring the oath to be subscribed and placed on file.

Mr. ADAMS. On page 2, as appears from the exhibit, there are four blank certificates, each one of which reads as follows:

"STATE OF MICHIGAN, *County of* ——— ss:

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election held on——day of——A. D. 191—, according to the best of my ability.

"———"

"Taken, subscribed, and sworn to before me this — day of——A. D. 191—."

Each one of said certificates appear in like manner upon this exhibit; there are no signatures appearing and the blanks are not filled in.

Q. Now, Mr. Ford, have you so you can tell us from the records from your office who the supervisors were, the township clerks or clerk, rather, and the justices of the peace elected at the April, 1912, election—townships elections—in the several townships in the County of Eaton?—A. Yes, sir; I have them as far as the record shows. Do you want more than the justice of the peace elected at that election?

Q. Yes; can you show them now?—A. Yes; I can. Bellevue Township, H. M. Weed, supervisor; clerk, C. A. Bentley; justice of the peace, C. H. Gayton. Benton Township, supervisor, Dwight Backus; clerk, Fenton F. Dwyer; justice of the peace, Wesley E. Warrior. Brookfield, supervisor, Milo Yoxhimer; clerk, F. C. Kuck; justice of the peace, Edwin A. Hahn. Carmel Township, supervisor, Gordon Griffin; clerk, D. C. Cole; justice of the peace, Oscar M. Thornton. Chester Township, supervisor, Charles W. Stahl; William J. Feathermann; justice of the peace, Frank Maxim. Delta Township, supervisor, Carl Chambly; clerk, William M. S. Ryant; justice of the peace, Luther L. Plumb. Eaton Township, supervisor, E. L. Stewart; clerk, E. E. Smith; justice of the peace, Harrison Allen. Eaton Rapids Township, supervisor, Seymour A. Rogers; clerk, Levi J. Winn; justice of the peace, George H. Long. Hamlin Township, supervisor, Ancil Holmes; clerk, Samuel B. Keefe; justice of the peace (none qualified). Kalamo Township, supervisor, S. I. Mapes; clerk, A. P. Swift; justice of the peace (none qualified). Oneida Township, supervisor, James H. Backus; clerk, John D. Jones; justice of the peace, John B. Strange. Roxand Township, supervisor, George E. Potter; clerk—Henry L. Stearns was clerk, and R. B. Jackson was elected at the time of the general election; justice of the peace, none qualified. Sunfield Township, supervisor, John H. Palmer; clerk, H. H. Mapes; justice of the peace, none qualified. Vermontville Township, supervisor, John C. Downey; clerk, Arthur L. Baughman; justice of the peace, Ernest G. Pray. Walton Township, supervisor, Simon D. Bryan; clerk, William Green, jr.; no justice of the peace. Windsor Township, supervisor, William J. Bateman; clerk, Ray Barnett; justice of the peace, Daniel Bateman. That is all the townships.

Q. Now, go through those townships again, Mr. Ford, and state the names of the justices of the peace, the two justices in each township whose term of office first expired, dating from the 5th day of November, 1912.—A. The first justice of the peace term expired July 4, 1913, and July 4, 1914. Bellevue Township, Daniel L. Hall, 1913; M. D. Rogers, 1914. Benton Township, J. Woodard, 1913; B. A. Murray, 1914. Brookfield Township, Frank E. Dewey, 1913; R. Mitchell, 1914. Carmel Township, Wm. Huber, 1913; Frank Halsey, 1914. Chester Township, Frank Arnold, 1913; G. E. Field, 1914. Delta Township, Willett Ladue, 1914. Eaton Township, Chas Hoffner, 1913; Geo. W. Labadie, 1914. Eaton Rapids Township, E. A. Smith, 1913; Chas. H. Wilbur, 1914. Hamlin Township, Samuel Hicks, 1913; Wm. J. Tucker, 1914. Kalamo Township, Geo. McConnell, 1913; Arthur Scrothers, 1914. Oneida Township, Chas. Bowen, 1913; Chas. D. Fuller, 1914. Roxand Township, Daniel Davis, 1913; Burton Pumfrey, 1914. Sunfield Township, Frank H. Bacon, 1913;

Dennis Hager, 1914. Vermontville Township, Wm. Benedict, 1913; Frank E. Hay, 1914. Walton Township, Albert C. Smith, 1913; Chas. O. Bugbee, 1914. Windsor Township, Samuel Vanderbeck, 1913; Frank L. Smith, 1914.

Q. Have you in your office, Mr. Ford, as a part of the files of the office of the county clerk of the county of Eaton, any instrument purporting to be the resignation by Ernest G. Pray of the office of county clerk?—A. I have; yes, sir.

Q. The instrument you now have in your hand is the paper that you just referred to?—A. It is.

Mr. ADAMS. I will offer the same and will read it in evidence.

Mr. MAYNARD. We object to it as incompetent and immaterial.

" STATE OF MICHIGAN,

" *County of Eaton, ss:*

" I hereby resign my office of county clerk and register in chancery and all the emoluments thereof, this resignation to take effect November 4, A. D. 1912.

" To the Hon. CLEMENT SMITH,

" *Circuit Judge, the 5th Judicial Circuit.*

" Dated at Charlotte this 30th day of October, A. D. 1912.

" ERNEST G. PRAY."

Mr. ADAMS. On the back of the paper produced by the witness appears the following:

" Fifth judicial circuit. In re resignation of Ernest G. Pray as county clerk. Accepted and placed on file this 2d day of November, 1912.

" CLEMENT SMITH, *Circuit Judge.*
(649)

" STATE OF MICHIGAN,

" *County of Eaton, ss:*

" Filed November 4, 1912.

" ERNEST G. PRAY, *County Clerk.*"

Q. That is all there is on the paper, isn't it, on either side of it?—A. I think so.

Q. Have you found in the files of the office of county clerk of this county of Eaton any appointment by the circuit judge of this county of any individual to fill the vacancy created by the resignation of Mr. Pray, just read?—A. I have.

Q. Is this the paper you produce?—A. It is.

Mr. ADAMS. I offer it in evidence.

Mr. MAYNARD. We object to it as incompetent and immaterial.

Mr. ADAMS. This being a part of the files in the county clerk's office I will not have it marked, but will read the same in full.

" STATE OF MICHIGAN, *County of Eaton, ss:*

" Whereas a vacancy exists in the office of county clerk and register in chancery in the county of Eaton; now, therefore, reposing special confidence in the ability and fitness of John C. Nichols to fill such vacancy, I do hereby appoint the said John C. Nichols county clerk and register in chancery for the county of Eaton for the time being.

" CLEMENT SMITH,

" *Circuit Judge.*

" Dated November 4, 1912."

On the back of the paper:

" STATE OF MICHIGAN, *County of Eaton, ss:*

" Filed November 4, 1912.

" E. M. LOHR,

" *Deputy County Clerk.*"
(649)

Q. Have you examined the journal proceedings of the circuit court for November 4, 1912, to see whether any order was entered in the journal of the court proceedings of that day appointing John C. Nichols to fill this vacancy in the office of county clerk in this county of Eaton?—A. I have not.

Q. Have you examined the files in your office to ascertain whether John C. Nichols, the person mentioned in this nomination just read, did or did not file

a bond as county clerk and register in chancery of the county of Eaton after this purported appointment?—A. I have not specially for that purpose.

Q. Will you please examine the files and records in your office and find, if you can, if any bond was filed by John C. Nichols as county clerk and register in chancery after the date of this nomination by Clement Smith, and also produce the journal showing the proceedings of the circuit court of Eaton County on the 4th day of November, 1912?

Mr. MAYNARD. We object to it as incompetent and immaterial, and not covered by the notice of contest.

Mr. ADAMS. Exhibit 22 shows—which is the poll book—that the certificate of inspectors to be signed by W. J. Bateman, Ray Burnett, S. G. Vanderbeck, and F. L. Smith, inspectors of the general election at the general election held on Tuesday, the 5th day of November, 1912.

Exhibit No. 23—statement book of the general election held November 5, 1912, in the township of Windsor, county of Eaton—shows that the same is signed by W. J. Bateman, Ray Burnett, S. G. Vanderbeck, and F. L. Smith, inspectors of election and is dated November 6, 1912.

Mr. MAYNARD. We object to that as incompetent and immaterial, and not covered by the notice of contest; and the further objection that the contestee is not notified by the pleadings by the opposite side what the object of this testimony is.

Mr. ADAMS. I didn't know it was necessary to tell what the object was. All the election returns that have been referred to to-day have been returns that were in envelopes addressed to the county clerk, Charlotte, Eaton County, Mich.

Mr. MAYNARD. I want to make this objection to the statements of counsel. The contestant has had the opportunity for some months of handling these returns and has done so a good many times, and I don't know whether they are in the original envelopes or what changes have been made. They have been open to the inspection of the public. The returns are in duplicate, and have been handled and have been mixed here by those who are handling them; so to separate them out and tell which went to the county clerk and which went to the board of county canvassers is difficult to tell. We don't know of anything to show that the statements of the attorney for the contestant is founded upon the fact.

Mr. ADAMS. Let the record show that these envelopes containing all these returns were produced by the county clerk and are right here within four feet of counsel at the present time, and have been while they have been referred to by counsel for the contestant. Some other returns are in envelopes addressed to the board of county canvassers, care of the probate judge or register of probate. Other returns or parts of the returns are in envelopes addressed to the county clerk, Charlotte, Eaton County, Mich.

Exhibit No. 24 is in the presence of counsel and within 4 feet of him and has been removed from an envelope addressed to the board of county canvassers, care of the probate judge or register of probate, Charlotte, Eaton County, Mich.

Exhibit 24 is a statement book of the general election held on Tuesday, the 5th day of November, 1912, in the township of Sunfield, Eaton County; has a blank form of certificate on the sixteenth page of it. It is not signed at all, as shown by the exhibit. I now show it to counsel to say whether I am stating it correctly. Nor is it signed by any one or ones of the inspectors of election, nor is the blank form filled out at all. If I am not correct in this statement, I ask counsel now to state upon the record the incorrectness of my statement in this regard. I now hand Exhibit 24 to Mr. Maynard, one of the counsel for the contestee.

Mr. MAYNARD. The objection I make to the record as produced is that they were returned in envelopes addressed to the county clerk. I am not prepared to admit that. I don't see how he can tell or I can tell that that is true. We find them there now.

Mr. ADAMS. I call attention to Exhibit 3, which is the statement book of the general election held on the 5th day of November, 1912, in the township of Sunfield, County of Eaton, which I have just taken from an envelope produced by the county clerk of Eaton County, addressed to the county clerk, Charlotte, County of Eaton, Mich. The certificate on the sixteenth page of Exhibit 3 is as follows:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"We hereby certify that the foregoing is a correct statement of the votes given in the township of Sunfield, County of Eaton, State of Michigan, at the general election held on Tuesday, November 5, 1912.

"In witness whereof we have hereunto set our hands at the township of Sunfield, in said county and State, this 5th day of November, A. D. 1912.

"J. H. PALMER,

"FRANK S. BACON,

"DENNIS A. HAGER,

"Inspectors of Election."

Mr. ADAMS. I now hand this Exhibit 3 to counsel for the contestee to say whether I have read it correctly into the record or not.

Mr. MAYNARD. I object to it as incompetent and immaterial.

Q. Have you before you, Mr. Ford, the record of the proceedings of the circuit court of Eaton County, showing the proceedings of that court on the 4th day of November, 1912?—A. Yes, sir; I have the journal.

Mr. MAYNARD. Objected to as incompetent and immaterial.

Q. Does the journal of the circuit court of Eaton County show the proceedings of that court held on the 4th day of November, 1912?—A. I have not examined it to see.

Q. Will you please turn to it? I call your attention now to a book which is marked on the back "Circuit Court Journal I, Eaton County." Do you find on that record any entry of any proceedings of the circuit court of Eaton County for the 4th day of November, 1912?—A. I do not.

Q. On page 191 of this record appears the following, does it not: "Sixth day session, Monday, October 28, 1912"?—A. Yes, sir.

Q. Signed—after the proceedings have been set forth is the signature of Clement Smith, circuit judge?—A. Yes, sir.

Q. The next we have in that book is "Seventh day's session, Wednesday, November 6, 1912"?—A. Yes, sir.

Q. Then appears the following: "This being the day to which the circuit court for the County of Eaton was adjourned by the circuit judge." Appearing below the same, "Hon. Clement Smith having given his order, thereupon the court was adjourned until Thursday morning, November 7, 1912." And under that is the signature of John C. Nichols, and under the signature of John C. Nichols appear the words "County clerk." Was that correctly read by me from the record?—A. Yes, sir.

Q. You don't find on that journal, to which your attention was directed, any business by the circuit court of Eaton County that occurred on the 4th day of November, 1912, do you?—A. I do not.

Q. Have you made an examination and search in your office to ascertain whether John C. Nichols filed any bond as county clerk and register in chancery of the county of Eaton at any time on or after the 4th of November, 1912?—A. I have spent the last 10 minutes.

Q. Did you find such a bond?—A. I did not.

Q. Do you have any place in your office where papers of that kind are kept separately by themselves, that character of papers?—A. I do.

Q. Have you found or seen any such a bond in the office of the county clerk of Eaton County given by John C. Nichols as county clerk and register in chancery of Eaton County, Mich., since you took charge of that office?

Mr. MAYNARD. I object to that as incompetent and immaterial.

The WITNESS. I have not seen it.

Q. How long have you been county clerk, Mr. Ford, in this county?—A. Since the 2d day of January, 1913.

Q. This is the first time you have been county clerk of this county?—A. Yes, sir.

Q. I show you a paper that is marked "Oath of office." Did you produce that here for me?—A. Yes, sir.

Q. Where did you get it?—A. In the office of the county clerk.

Q. Is that a part of the files of your office?—A. It is.

Q. When did you first find that paper in your office?—A. I couldn't say when I first saw it. It was first called to my attention to-day; I was asked to look for it.

Q. Where did you find it?—A. In the file case in my desk.

Q. Was that the first place you found it in your office?—A. Yes, sir.

Q. The first time you found it?—A. I think so.

Q. Did you find it in there within a week after you took the office of county clerk of this county?—A. I couldn't state.

Q. Have you any recollection of when you first saw that paper, "Oath of office," which you just now produced in the office of the county clerk?—A. I couldn't say that I have; no, sir.

Mr. ADAMS. This being a file from the office of the county clerk, I will not have it marked, but will read it in evidence.

"STATE OF MICHIGAN,
"County of Eaton, ss.

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of county clerk and register in chancery according to the best of my ability.

"JOHN C. NICHOLS.

"Subscribed and sworn to before me this 4th day of November, A. D. 1912.

"ERNEST G. PRAY,
"Notary Public.

"My commission expires 12-28-12."

Q. These envelopes that are before you addressed to the county clerk, Charlotte, county of Eaton, State of Michigan, and these envelopes that are before you addressed to the board of county canvassers, care the probate judge or the register of probate, Charlotte, Mich., are all envelopes that were a part of the files, papers, and returns in your office at this time?—A. They are; yes, sir.

Q. How long have these, to your knowledge, these envelopes and returns, to your knowledge been in the office of the county clerk of Eaton County?—A. Since the 2d day in January, 1913.

Q. You have at the different sessions of this hearing in this matter produced these here for counsel for the respective parties, have you not?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. By whom was this oath of office filed?—A. By Edna M. Lohr, deputy county clerk, the 4th day of November, 1912.

Q. That filing appears on the back of the oath of office?—A. Yes, sir; also on the back of the oath of office "John C. Nichols, county clerk."

Q. That is the filing on the back of the paper?—A. Yes, sir.

Q. Has this Edna M. Lohr been your deputy since you have taken office?—A. Yes, sir.

Q. She is still in the office, is she?—A. Yes, sir.

Q. She has had experience with your predecessor for some time?—A. Yes, sir.

Q. Have you held any other office in the county but the office of county clerk?—A. I have.

Q. Township office?—A. It was.

Q. What was it?—A. Supervisor of Eaton Rapids township.

Q. You had seen Edna M. Lohr in the county clerk's office working there for some time before the change of administration?

Q. Since you took your office, have you seen anybody examining these returns and statements?—A. Yes, sir.

Q. These election returns?—A. Yes, sir.

Q. Have you seen the contestee, John M. C. Smith, examining the returns?—A. Yes, sir.

Q. When?—A. Why, I think he came in the office one day this week and asked to see the returns from a certain township.

Q. That is all?—A. That is all; all that I recollect.

Q. Has he at any time examined these returns and handled them over, to your knowledge?—A. He has not; no, sir.

Q. When these have been brought up here, has the contestee, John M. C. Smith, had anything to do with the production of them here before this commissioner?—A. He has not; no, sir.

Q. Has anyone for him, that you know of?—A. Not to my knowledge; no.

Q. By whom have these returns been produced here before the commissioner?—A. By the attorneys for the contestant.

Q. They have turned them over to you nights when they got through with them?—A. Yes, sir; they have been returned to my office.

Q. They got them and brought them here?—A. I think I brought them up here on each occasion; that is my recollection.

Q. Have you seen Mr. Carney fingering over those returns from time to time in your office since you took possession?—A. Yes, sir.

Q. No objection was made to him handling them in that way, was there?—A. No, sir.

Q. Now, has he had access to these books a considerable length of time alone—going through the books alone?—A. Well, I could say that he has been

alone with the books; I can say that he has been in the office and taken the books, and we have gone about our regular office work; possibly we have been both absent—Miss Lohr and I—at the same time; I couldn't say.

Q. During the time you were about your business, has he had the books and examined them there at the table without anybody interfering with him or overlooking his work?—A. He has; yes, sir.

Q. Did you ever see John M. C. Smith in there sitting down at the table examining these books as much as you have Mr. Carney?—A. I think not; no, sir.

Q. You don't recollect of ever seeing Mr. Smith in there examining these only when he wanted to see the returns from a certain township?

Mr. ADAMS. I object to that as incompetent and calling for the conclusion of the witness.

The WITNESS. No, sir.

Q. Did you give him the returns from that precinct?—A. Yes, sir.

Q. Has he ever asked you to get the returns only that one time?—A. I don't remember that he has.

Redirect examination by Mr. ADAMS:

Q. What precinct was that that Mr. Smith wanted you to show him the returns of?—A. It is my recollection that it was Sunfield.

Q. Sunfield?—A. Yes, sir; I wouldn't say positively; that is my recollection.

Q. Did you give him the election returns for Sunfield at the time he asked for them?—A. Yes, sir.

Q. Did you give him some others—bring them all out together?—A. No, sir; he asked me for the returns from Sunfield and I brought them out and we looked them over together.

Q. Has counsel for the contestee been examining these election returns since you have held the office of county clerk?—A. Not to my knowledge.

Q. Has Mr. Maynard been in there examining them at any time?—A. I don't remember of seeing Mr. Maynard in there looking at the returns since I have been in office.

Q. Do you recall the first time I came into your office to examine the election returns, Mr. Maynard came in and sat down to the same table I was at and took several of the returns and looked them over at the same table I was at?—A. I couldn't tell you what was done with the returns; Mr. Maynard came in the office on that occasion, but I was not watching the contestant or the contestee.

Q. Well, now, when Mr. Carney or his attorney has been in your office looking at these returns, they were handed to him or them in the public office?—A. Yes, sir.

Q. In your suite of rooms?—A. Yes, sir.

Q. And you or your deputy clerk were around there and in that room, one or the other of you, practically all the time the returns were being examined by Mr. Carney or his attorney?—A. I couldn't say we were in there all the time.

Q. Is that your best recollection?—A. We were in and out of the office; we were at our ordinary work; we didn't change it in any way.

Q. Do you know of any other time when Mr. Carney or his attorney, or both of them, were in there examining the returns?—A. I would not know what happened when I was absent.

Q. You don't know of any time when you were absent when they or either of them, Mr. Carney or his attorney, were in there examining these returns? You don't know of any time when you and your deputy were out of the office when they were being examined by them?—A. I can recall times when I was absent from the office during that time some times; I couldn't tell whether my deputy was there or not, because I was not there.

Q. Well, yesterday when the returns were being examined by Mr. Carney and myself you came into the office before we concluded the examination, didn't you?—A. Yes, sir.

Q. When you got there your clerk was sitting there at the desk at my back?—A. Well, I don't remember that; I didn't notice the position she was in; she was in the room I think.

Q. She was sitting there and left you sitting there until we left?—A. Yes, sir.

Q. Right there where we were in the same room?—A. Yes, sir.

Q. These election returns that are a part of the files and records in your office, these election returns, are now within 2 or 3 feet of counsel for John M. C. Smith, are they not—4 feet?—A. Well, I should say within 6 feet, probably.

Q. They have been in the presence of the attorneys on both sides of this contest whenever you have been present during the taking of this testimony before the commissioner?—A. Yes, sir.

Q. And been in his immediate presence, too?—A. Yes, sir; as far as I know.

Q. You have seen counsel for the other side examining some of them here when you have been before the commissioner?—A. Yes, sir.

Recross-examination by Mr. MAYNARD:

Q. Do you know whether of not there has been two bonds filed in the county clerk's office, one by Mr. Nichols as county clerk and one as register in chancery?—A. There was not a register in chancery's bond filed in this office; it is filed with the secretary of state.

Q. Do you know whether that has been done by Mr. Nichols?—A. I do not.

Q. You have never seen either bond in your office?—A. No, sir.

Q. Did you ever speak to Mr. Nichols about it?—A. I never have.

Q. You have never had your attention called to that matter until now?—A. I don't remember that I have.

Q. What you mean to say is that within the last ten minutes you have not been able to lay your hand on that bond, if there is one?—A. That is what I say.

Redirect examination by Mr. ADAMS:

Q. Have you looked for this bond in the places or place in your office where you would expect to find them?—A. I did.

Q. You have file cases in your office for bonds?—A. Yes, sir.

Q. And they are labeled, are they not?—A. We have a file case similar to this marked "Bonds of county officers" for the current year. We keep those files in that case for that year.

Q. Where are the bonds kept, if any, that were filed for the year 1912?—A. I was unable to locate them. I found no record on the general index for 1912 where there were any bonds filed for that year. I was unable to find it in there.

Q. Will you look a little farther and see whether you can find those 1912 bonds, and the one that should have been filed about November 4, 1912, by Mr. Nichols?—A. I can look, but if I don't find it in the file case or index, I don't know where to look.

Recross-examination by Mr. MAYNARD:

Q. Have you been in the treasurer's office and asked for that bond?—A. No, sir.

Q. Will you inquire of the treasurer whether any of these bonds are in his possession?—A. I will.

Redirect examination by Mr. ADAMS:

Q. Mr. Ford, you have produced here and handed me a bond of John C. Nichols; is that so?—A. Yes, sir.

Mr. ADAMS. I offer this bond in evidence.

Mr. MAYNARD. I object to it as incompetent and immaterial.

Q. Where did you find this bond?—A. I found it in the office of the county treasurer of Eaton County, Mich.

Mr. ADAMS. This bond is as follows:

"Know all men by these presents that we, John C. Nichols, as principal, and the American Bonding Co., of Baltimore, Md., a corporation duly authorized to do business in the State of Michigan, are held and firmly bound unto the people of the State of Michigan in the penal sum of \$2,000, for the payment of which sum well and truly to be made in lawful money of the United States of America we jointly bind ourselves, our heirs, executors, and administrators forever firmly by these presents.

"Sealed with our seals and dated this 11th day of November, A. D. 1912.

"Whereas the above bounden John C. Nichols was appointed to the office of clerk of the County of Eaton, State of Michigan, to fill a vacancy on the 4th day of November, 1912.

"And whereas, by virtue of his said office as clerk and as register in chancery of the circuit court of said county, now therefore, the condition of this obligation is such that if the said John C. Nichols shall faithfully perform the duties of said office of register in chancery, then the above obligation shall be void, otherwise to be and remain in full force.

"JOHN C. NICHOLS, [SEAL.]

"American Bonding Co.

"By CHARLES H. McNAUGHTON, [SEAL.]

"Attorney in fact."

Mr. ADAMS. To the left, under the words "in presence of," is the seal of the American Bonding Co., incorporated in 1894. On the back of the bond appears the following: "Official bonds of county officers with instructions to use the form for the different county officers. John C. Nichols."

"STATE OF MICHIGAN, *County of Eaton*, ss:

"Filed November 12, 1912.

"CLEON A. BOYER,
"County Treasurer."

Q. That is his bond as register in chancery?—A. Yes, sir; although it says that he was appointed to the office of clerk. I think we have got the wrong bond. Both bonds are filed with the treasurer. There is another bond of John C. Nichols. I picked this up thinking only of the bond that is filed as county clerk.

Q. Is there another one down there?—A. Yes, sir.

Q. You have produced and handed to me another bond of John C. Nichols. have you not?—A. Yes, sir.

Mr. ADAMS. This bond I offer in evidence.

Mr. MAYNARD. We object to it as incompetent and immaterial.

Mr. ADAMS (reading).

"Know all men by these presents that we, John C. Nichols, principal, and the American Bonding Co., of Baltimore, Md., a corporation duly authorized to do business in the State of Michigan, are held and firmly bound unto the people of the State of Michigan in the penal sum of \$3,000 for the payment of which sum well and truly to be made in lawful money of the United States of America, we jointly and severally bind ourselves, our heirs, executors, and administrators forever firmly by these presents.

"Sealed with our seals and dated this 11th day of November, 1912.

"Whereas the above bounden John C. Nichols was appointed to the office of county clerk to fill a vacancy of the county of Eaton, State of Michigan, on the 4th day of November, 1912.

"Now therefore the condition of the above obligation is such that if the said John C. Nichols shall faithfully, truly, and impartially enter and record all orders, decrees, judgments and proceedings of the court whereof he shall officiate as clerk, and faithfully and impartially perform all the duties of said office, and turn over all moneys that shall come into his hands as such clerk, and deliver over to his successor in office the books, records, papers, and seals belonging to the said office, then the above obligation shall be void, otherwise be and remain in full force.

"JOHN C. NICHOLS. [SEAL.] "

"American Bonding Co.,

"By CHARLES H. McNAUGHTON, [SEAL.]

"Attorney in fact."

Mr. ADAMS. To the left, under the words "In presence of," is impressed the seal of the American Bonding Co., incorporated in 1894. On the back appears the following:

"Official bond of county officers, with instructions to use the form for the different county officers.

"JOHN C. NICHOLS.

"STATE OF MICHIGAN, *County of Eaton*, ss.

"Filed November 12, A. D. 1912.

"CLEON A. BOYER, *County Treasurer*."

Q. Do you know where Charles H. McNaughton, the attorney in fact, lives?—A. I do not.

Q. Or where he has his office?—A. I think in Detroit, Mich., but I am not sure.

Recross-examination by Mr. MAYNARD:

Q. Mr. FORD, how long have you been connected with the county seat doing business here at the courthouse in different capacities, so you became familiar with the office here?—A. Probably 10 years.

Q. Have you known John C. Nichols all that time?—A. I have.

Q. Have you ever met him more than once with the board of supervisors?—A. Yes, sir.

Q. When the board of supervisors are in session, do they meet at the same time the circuit court does?—A. The January session generally does.

Q. Do you have an October session?—A. Yes, sir.

Q. Of the supervisors in this county?—A. Yes, sir.

Q. Do one of the terms of court convene in October?—A. I believe so.

Q. Now, during the time you have been acquainted here, has Mr. Nichols been deputy county clerk of this county for a good many years?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not the best evidence.

The WITNESS. I think he has.

Q. Have you seen him frequently when the board of supervisors were in session in the court room acting as county clerk or clerk of the court while the board of supervisors were in session in this room?

Mr. ADAMS. Objected to as irrelevant and immaterial.

The WITNESS. I can't say that I have seen Mr. Nichols acting as clerk of the court.

Q. Have you ever seen him in here while the county clerk was in the other room?—A. I can't remember that I ever did.

Mr. ADAMS. I object to that as irrelevant and immaterial.

Q. Was he deputy county clerk during the year 1912?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not the best evidence.

Redirect-examination by Mr. ADAMS:

Q. Do you keep a record in your office showing who the deputy clerks are?—A. Yes, sir.

Q. The deputies qualify in some way, don't they?—A. No, sir; the deputies make no qualification.

Q. Are not bonds filed?—A. A bond is given by the county clerk, approved by the circuit judge, and filed in the office.

Q. So the record should be in the office who these deputies have been in the past?—A. Yes, sir.

By Mr. MAYNARD:

Q. Will you produce the appointment of Mr. Nichols?—A. I haven't it here.

Q. I wish you would produce that.—A. I have just looked for it and couldn't find it; it is marked on the miscellaneous index as being——

Mr. ADAMS. I object to the witness stating what is marked on any index, the records will show for themselves.

The WITNESS. The index is a part of the records of the office.

Mr. MAYNARD. If you will produce the records themselves they are the best evidence.

The WITNESS. Do you want the index?

Q. Yes. Do you see any record there of the appointment of John C. Nichols as deputy county clerk, if so, when?—A. It is on the fifth page of the miscellaneous index, the appointment of John C. Nichols as county clerk.

Q. What do the figures refer to?—A. To the file case in our vault.

Q. Do you know what year that appears to be in?—A. The date is not placed here; however, it was written in at the bottom of the page in the handwriting of Miss Edna Lohr, it must have been during the year 1912.

Q. Have you examined all these files?—A. Yes, sir.

Q. It is not in the files?—A. No, sir; it is not.

Redirect examination by Mr. ADAMS:

Q. Now, Mr. Ford, following the page on which you find this appointment of John C. Nichols as county clerk, are the figures 649, which you just read. There follows two other pages which are entirely filled with written matter except a couple of lines at the bottom of the third page?—A. The second page.

Q. At the bottom of the second page following, it is entirely filled with writing except about two lines at the bottom, is that correct?—A. Yes, sir.

Q. If that entry had been made—was made in 1912—the logical place would be after the page where it is entered?—A. It would not.

Q. Why not?—A. Because the two full pages are indexed B and that is indexed A.

Q. Where do you find that?—A. Here is the index letter A and here is the index letter B. The miscellaneous index all matters under the subject of A comes up under that.

Q. Have you any other miscellaneous index in your office?—A. We have one that has not been used that just came in.

Q. Has it been in there ever since you have been in office?—A. It has been in there about two days.

Q. Was it in there when you went into office?—A. No, sir.

Q. I notice on this same page that this appointment of Mr. Nichols as county clerk appears is attached an extra sheet, which is not a part of the bound volume, when was that put in there?—A. It was in there I think immediately after I came into the office.

Q. Do you know whether it was or was not put in there after you came into the office?—A. I think it was after I came in, but I couldn't say positively.

Q. Do you know in whose handwriting the entries on the extra page is, this page which is bound in the book on which this appointment of Mr. Nichols as county clerk is entered?—A. There are four entries, three in the handwriting of Miss Lohr and one in my handwriting.

Q. The following entry on the first sheet following the reports on school inspectors, do you know when those reports were filed in the county clerk's office?—A. I couldn't say—during the month of January.

Q. Do you know whether those reports have been filed in that office since the 1st of January, 1913?—A. I couldn't say, I didn't make the entry.

Q. You don't know whether they were filed there then since January 1, 1913?—A. I don't know.

Q. Or whether they were filed before, you don't know?—A. No, sir; I do not.

Q. Do you know when that entry on that book, viz, the entry appointing John C. Nichols as county clerk 649, was made in that of your own knowledge?—A. It has been made since the 16th day of June.

Q. That is not the question; the question is do you know when it was made?—A. I do not.

Mr. MAYNARD. With reference to the county clerk's appointment, I wanted the appointment of the deputy county clerks; that is what I wanted to get at.

Q. You don't find any record there at all of the appointment of John C. Nichols as deputy clerk?—A. No, sir; I don't seem to.

Q. Counsel for contestant produced this appointment of county clerk; where did you find that, in this same box?—A. Yes, sir.

Q. That file happened fortunately to be in the place where it was indexed?—A. Yes, sir.

Whereupon an adjournment was taken until 9 o'clock a. m., Friday, February 28, 1913.

FRIDAY, FEBRUARY 28, 1913.

STIPULATION.

It is stipulated by counsel for the contestant and counsel for the contestee that on and including November 5, 1912, Frank Flaherty and Alonzo Hough-taling were the aldermen in the first ward of the city of Charlotte; also that Hal Hamilton and Claude S. Knowles were at that time aldermen in and of the second ward of the city of Charlotte; also that Evander Dunning and J. B. Dowdigan were at that time the aldermen in and of the third ward of the city of Charlotte; also that James Greenman and Claude A. Pope were at that time alderman in and of the fourth ward of the city of Charlotte; also that E. R. Laverty was city clerk in and of the city of Charlotte at that time.

Mr. ANAMS. Referring to Exhibit 25, tally-sheet book of the general election held on the 5th day of November, 1912, second ward, city of Charlotte, county of Eaton. This is taken from the returns of the election furnished here by the county clerk of Eaton County, and I am reading from page 12, under the head of office appears the following: "Representative in Congress." Under the head of "Candidates and names," appearing opposite the title "Representative in Congress," John M. C. Smith and Claude S. Carney. Under the head of "Total straight votes," opposite the name of John M. C. Smith, 65. Under the head of "Total split votes," opposite the name of John M. C. Smith, 59. Under the head of "Total votes received," opposite the name of John M. C. Smith, 161. Under the head of "Total straight votes," opposite the name of Claude S. Carney, 48. Under the head of "Total split votes," opposite the name of Claude S. Carney, 64. Under the head of "Total votes received," opposite the name of Claude S. Carney, 107.

Reading from Exhibit 26, book, entitled "Statement of general election held the 5th day of November, 1912, second ward, city of Charlotte, county of

Eaton," on page 7 thereof, under the title "Representative in Congress," appear the names of John M. C. Smith and Claude S. Carney. Under the heading opposite the name John M. C. Smith, which heading is "Votes received," there appears opposite the name of John M. C. Smith, 161. Under the heading at the top of the column, which heading is "Put in figures in this column," opposite the name of John M. C. Smith, are the figures 161. Under this same heading, opposite the name of Claude S. Carney, appear the figures 107.

I now hold in my hand a book marked "Charter of the city of Charlotte and the Rules and Ordinances," and I ask counsel upon the other side whether they stipulate to concede upon the record that the book I have in my hand, which I have just given the title of, contains, on pages 3 to 99 thereof, both pages inclusive, the charter of the city of Charlotte, county of Eaton, Mich., which was in force during the year 1912, and the only charter of that city from the 1st day of January, 1912, to and including the 1st day of January, 1913, and still is the charter and the only charter of the city of Charlotte in said county and State. That contains all the charters as to elections; we have had some amendments on some other matters, but they do not refer to elections.

We asked counsel for the contestee to concede that the charter which is referred to contains the only charter provision in force during that period of time relating to elections.

Mr. MAYNARD. Yes, sir.

Mr. ADAMS. I desire to offer from this charter from page 12, sections 33, 34, 35, and 36, and will read into the record the first section:

"SEC. 33. On the day of election, held by virtue of this act, the polls shall be opened in each ward at the respective places designated by the council at 8 o'clock in the morning and shall be kept open until 5 o'clock in the afternoon, but not later, at which hour they shall be finally closed.

"SEC. 34. The two aldermen of each ward, except as in this act otherwise provided, shall constitute the board of inspectors of election for their respective wards at all elections held therein whether ward, city, county, district, or State. If at any election either or both of such inspectors shall be absent at the hour for opening the polls or shall not remain in attendance the electors present may chose viva voce such number of such electors as, with the inspectors present, if any, shall constitute a board of two in number, and such electors so chosen shall be the inspectors of that election. Such board of election inspectors may appoint such number of clerks, gatekeepers, and officers as shall be necessary to comply with the election law of the State, and all persons so appointed and each inspector so appointed or chosen shall take the constitutional oath of office, which oath either of the inspectors may administer, or any person authorized by law to administer oaths. The senior alderman of each ward shall be chairman of the board of inspectors of the election therein.

"SEC. 35. All elections held under the provisions of this act shall be conducted as near as may be in the manner provided by law for holding general elections in the State, except as herein otherwise provided. The inspectors of such election shall have the same powers and authority for the preservation of order and for enforcing obedience to their lawful commands during the holding of the election and the canvassing of the vote as are conferred by law upon inspectors of the general elections held in this State.

"SEC. 36. The manner of conducting elections and canvassing votes shall be the same as in townships, the word "ward" instead of "township" being used in the oath to be administered to an elector in case his vote is challenged, and in the making of all certificates or statements of and concerning such election, provided that at such charter election said ward inspectors shall make a statement in writing setting forth in words at full length the whole number of votes given for each office, the names of the persons for whom the votes for each office were given, and the number of votes so given for each person and the whole number of votes given upon each question voted upon and the number of votes given for and against the same, which statement shall be certified under the hands of the inspectors to be correct, and they shall deposit such statement and certificate on the day of election, or before noon of the next day thereafter, together with the poll lists, tally sheets, register of electors, and the boxes containing said ballots in the office of the city clerk."

I offer in evidence Exhibit 27, marked "Poll book of the general election held on the 5th day of November, 1912, in the township of Carmel, county of Eaton, Mich.," which is one of the returns of election in the custody of the county clerk of Eaton County, Mich., and produced by him on this hearing. I

read from page 2 thereof under the heading "Oaths of inspectors of election," as follows:

Mr. MAYNARD. We object to that as incompetent and immaterial.

Mr. ADAMS (reading):

"STATE OF MICHIGAN,

"County of Eaton, ss:

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election, held on Tuesday, the 5th day of November, 1912, at the Carmel town hall, township of Carmel, according to the best of my ability.

"GORDON GRIFFIN.

"Taken, subscribed, and sworn to before me this 5th day of November, A. D. 1912.

"W. L. HUBER."

There is no designation appearing on this certificate showing the official character of W. M. Huber.

The second certificate is a certificate of like character, but there is no signature of any person making the oath, and is signed by W. L. Huber, but there is no designation of his official character.

The third certificate is contained on this same page and is of like character as the one read into the record, but bears the signature of no one making the oath. It is signed by W. L. Huber in like manner as the first certificate read in evidence.

The fourth certificate appearing on this same page of Exhibit 27 is signed by Hurlburt Shaver. Under the name of Hurlburt Shaver appear the following:

"Taken, subscribed, and sworn to before me this 5th day of November, A. D. 1912.

"W. L. HUBER."

There is no designation under the name W. L. Huber in what capacity he was acting in administering the oath. On page 8, of Exhibit 27, appears another certificate, as follows:

"STATE OF MICHIGAN,

"County of Eaton, ss:

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election held on Tuesday, the 5th day of November A. D. 1912, at Carmel township hall, in the township of Carmel, according to the best of my ability.

"CORTES F. CUSHING."

"Taken, subscribed, and sworn to before me this 5th day of November, A. D. 1912.

"W. L. HUBER."

There is no designation of the official capacity under the name of W. L. Huber. On the same page 8, of Exhibit 27, appears the following:

"STATE OF MICHIGAN,

"County of Eaton, ss:

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election held on Tuesday, the 5th day of November, A. D. 1912, at the Carmel town hall, Carmel township, according to the best of my ability.

"WILLIAM CLEMENTS.

"Taken, subscribed, and sworn to before me this 5th day of November, A. D. 1912.

"W. L. HUBER."

There is no official designation under the name of W. L. Huber as to his official capacity. These two certificates last read into the record the word "inspector" in the certificate is written in with a pen over the printed word

"clerk." In each one of the certificates the word "clerk" has a line drawn through it. On this same page 3, of this same Exhibit 27, are two certificates being respectively signed by D. C. Cole and Wilbur C. Martin.

"STATE OF MICHIGAN,

"County of Eaton, ss:

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of clerk of this election held on Tuesday, the 5th day of November, A. D. 1912, at the Carmel town hall, township of Carmel, according to the best of my ability."

Under the respective names appear the following:

"Taken, subscribed, and sworn to before me this 5th day of November, A. D. 1912.

"W. L. HUBER."

There is no designation under the name of W. L. Huber of his official capacity.

Reading from page 16 of this same Exhibit No. 27 is the following:

"The whole number of votes cast, according to the poll list, is 239. The whole number of ballots counted on opening the ballot box was 238. The whole number of ballots in excess of the number of electors voting destroyed was 172."

"CERTIFICATE OF INSPECTORS.

"STATE OF MICHIGAN, *County of Eaton, ss:*

"We do hereby certify that the foregoing poll list has been carefully compared by us with the duplicate poll list as required by law and that all mistakes found in such poll lists have been duly corrected by us and that both said poll lists are now correct and agree with each other.

"In witness whereof we have hereunto set our hands at Carmel Township hall, in said county and State, this 5th day of November, A. D. 1912.

"GORDON GRIFFIN,

"CORTEZ F. CUSHING,

"HURLBURT SHAVER,

*"Inspectors of General Election held on
"Tuesday, the 5th day of November, A. D. 1912."*

I offer in evidence the statement book of the general election held on Tuesday, the 5th day of November, A. D. 1912, at the township of Carmel, county of Eaton, State of Michigan, being marked Exhibit 28, being one of the election returns which has been produced by the county clerk of the county of Eaton, and read from page 16 of Exhibit 28, as follows:

"CERTIFICATE.

"STATE OF MICHIGAN, *County of Eaton, ss:*

"We do hereby certify that the foregoing is a correct statement of the votes given in the township of Carmel, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the town house of Carmel, in said county and State, this 5th day of November, A. D. 1912.

"GORDON GRIFFIN,

"D. C. COLE,

"HURLBURT SHAVER,

"W. L. HUBER,

"Inspectors of Election."

I desire to have it appear upon the record that Exhibit 27 contains no certificate showing that W. L. Huber took any oath, so far as that exhibit shows, such as the other inspectors in that precinct took, as shown by this Exhibit 27, to act in the capacity of inspector at that election on that day. I show this Exhibit 27 to counsel for the contestee and ask him to challenge the incorrectness of this statement upon the record.

Mr. MAYNARD. I object to it as being incompetent and immaterial and as not tending to show that W. L. Huber did not take the constitutional oath of office as required by the election law on that occasion.

Mr. ADAMS. I offer in evidence Exhibit 29, entitled "Poll book of the general election held on the 5th day of November, A. D. 1912, in the township of Kalamo, county of Eaton, Mich."

On page 2, under the heading "Oaths to inspectors of election," the printed forms of oaths for inspectors of election are not filled out in any particular instance, to which I call the attention of counsel for the contes ee to. I now show him this exhibit and ask him to correct the statement I have just made, if it is not correct as shown by this exhibit.

Mr. MAYNARD. I will not take time to examine it but I will object to its introduction on the ground that it is incompetent and immaterial and does not tend in any way to show that the officers did not take the constitutional oath of office as required.

Mr. ADAMS. I offer in evidence Exhibit 30, entitled "Poll book of the general election held on the 5th day of November, A. D. 1912, in the township of Benton, Eaton County, Mich." and desire to read from page 16 of Exhibit 30 as follows:

" CERTIFICATE OF INSPECTORS.

" STATE OF MICHIGAN, *County of Eaton, ss:*

" We do hereby certify that the foregoing poll list has been carefully compared by us with the duplicate poll list as required by law, and that all mistakes found in such poll lists have been duly corrected by us, and that both said poll lists are now correct and agree with each other.

" In witness whereof we have hereunto set our hands at the township of Benton, in said county and State, this 6th day of November, A. D. 1912.

" JOHN D. WRIGHT,

" R. R. GREGG,

" FENTON F. DYER,

" WILLIAM H. VAN AUKEN,

" *Inspectors of the General Election*

Held on Tuesday, the 5th day of November, A. D. 1912.

I offer in evidence Exhibit 31, statement book of the general election held on the 5th day of November, A. D. 1912, at the township of Hamlin, county of Eaton, Mich., and I read from page 16 of this exhibit as follows:

" CERTIFICATE.

" STATE OF MICHIGAN, *County of Eaton, ss:*

" We do hereby certify that the foregoing is a correct statement of the votes given in the township of Hamlin, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

" In witness whereof we have hereunto set our hands at the town hall, township of Hamlin, said county and State, this 6th day of November, A. D. 1912.

" ANCIL E. HOLMES,

" S. D. HICKS,

" J. E. McNUTT,

" OLIVER D. LAKE,

" *Inspectors of Election.*"

I offer in evidence Exhibit 32, tally sheet book of the general election held on Tuesday, the 5th day of November, A. D. 1912, at the township of Eaton, Eaton County, Mich., and desire the record to show that page 12 of this exhibit under the office, namely, "Representative in Congress," opposite the names of the candidates for Representative in Congress, to wit, John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edwin N. Dingley, there appear in the spaces where the tallies ought to be in no tallies whatever. Under the heading "Total straight votes," opposite the name of John M. C. Smith, 55. Under the heading "Total split votes," opposite the name of John M. C. Smith, 84. Under the heading "Total votes received," opposite the name of John M. C. Smith, 139. Under the heading "Total straight votes," opposite the name of Claude S. Carney, 31. Under the heading "Total split votes," opposite the name of Claude S. Carney, 12. Under the heading "Total votes received," opposite the name of Claude S. Carney, 43. No figures entered opposite the name of Levant L. Rogers. Under the heading "Total straight votes," opposite the name of Edwin N. Dingley, 6. Under the heading "Total split votes," opposite the name

of Edwin N. Dingley, 36. Under the heading "Total votes received," opposite the name of Edwin N. Dingley, 42.

I show this book 32, page 12, to counsel for the contestee, and call his attention to the fact just recited upon the record, and ask him to challenge the correctness of the statement.

Mr. MAYNARD. I will not take time to examine it but will object to it as incompetent and immaterial and will object to the statement of the attorney for the contestant as made respecting these exhibits from 25 to 32, inclusive, as not being the best evidence; the best evidence would be the books themselves.

Mr. ADAMS. It is the book itself that I am reading from. It is impossible to produce these books before the committee of the House of Representatives. I now open and hold before counsel and lay down on his desk this Exhibit 32, open to page 12, and ask him to challenge the correctness of the statement I have made upon the record.

Mr. MAYNARD. I will not take time for that, but insist upon the book being placed in evidence and laid before the committee in Congress.

Mr. ADAMS. Is there any question about the correctness of my statement?

Mr. MAYNARD. I am not going to examine it nor admit nor deny anything as to what the books contain; I am objecting to the manner of proving it.

Mr. ADAMS. The book is in evidence. We would be glad to have the books taken to Washington so the committee of the House of Representatives could see them. We believe they will show even more than we are claiming for them. It might be of material benefit to the committee to have the advantage of them in this investigation.

Mr. MAYNARD. The books can be put in evidence and taken down there.

Mr. ADAMS. I don't suppose we can take them out of the files of the county clerk of Eaton County. The law requires them to remain there. If there is any means, legally, by which they can be removed from the custody of the clerk of Eaton County, counsel for contestant has no objection to their being taken before the committee of the House of Representatives upon the hearing of this proceeding.

We offer in evidence Exhibit 33, poll book of the general election held on Tuesday, the 5th day of November, A. D. 1912, at the township of Walton, Eaton County, Mich., being one of the records presented here before the commissioner taking the depositions by the county clerk of Eaton County. I desire to call attention to page 16 of this poll book:

There is no entry made in writing or figures under the heading "Whole number of votes cast according to the poll lists was."

There is no entry made in writing or figures under the words "whole number of votes counted on opening the ballot box was."

There is no entry made in writing or figures under the words "Whole number of ballots in excess of the number voted and destroyed was."

I call attention on this same page of this same exhibit, the form of the certificate there printed to be filled out is not signed by anybody. Opposite these words appear "Certificate, inspectors of the general election held on Tuesday, the 5th day of November, A. D. 1912." The places for the signatures are entirely blank. I show this to the counsel and lay it upon his desk, and ask him to challenge the correctness of the statement made upon the record.

Mr. MAYNARD. I will not take time to examine the book, but will object to it as incompetent and immaterial and not the best evidence.

Mr. ADAMS. I will offer in evidence Exhibit 34 tally sheet book of the general election held on Tuesday the 5th day of November, A. D. 1912, for the township of Walton, county of Eaton, Mich., and desire to have the record show that opposite the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edwin N. Dingley, opposite the words "Representative in Congress," that there is absolutely no tally made upon this tally book. All that appears opposite "Representative in Congress" are the following figures:

Under the heading "Total votes received" opposite the name of John M. C. Smith, 139.

Under the heading "Total votes received" opposite the name of Claude S. Carney, 135.

Under the heading "Total votes received" opposite the name of Levant L. Rogers, 3.

Under the heading "Total votes received" opposite the name of Edwin N. Dingley, 86.

I show this page 12, which I have just read from, to counsel for the contestee, and lay the book before him on his desk and ask him to challenge upon the record the correctness of the statement I have just made on the record.

Mr. MAYNARD. I will not examine the book, but I will object to it as incompetent and immaterial and not the best evidence.

Mr. ADAMS. I offer in evidence Exhibit 35, which is the tally-sheet book of the general election held on Tuesday, November 5th, A. D. 1912, at the township of Bellevue, Eaton County, Mich., which has been produced here by the county clerk of Eaton County. On page 12 of this exhibit, which is the tally-sheet book, there are no tallies entered opposite the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edwin N. Dingley, candidates for Representative in Congress, except one tally opposite the name of Claude S. Carney.

Under the head of "Total straight votes," opposite the name of John M. C. Smith, appear, 188.

Under the head of "Total split votes," opposite the name of John M. C. Smith, 58.

Under the head of "Total votes received," opposite the name of John M. C. Smith, 246.

Under the head of "Total straight votes," opposite the name of Claude S. Carney, 117.

Under the head of "Total split votes," opposite the name of Claude S. Carney, 38.

Under the head of "Total votes received," opposite the name of Claude S. Carney, 155.

Under the head of "Total straight votes," opposite the name of Levant L. Rogers, —.

Under the head of "Total split votes," opposite the name of Levant L. Rogers, 2.

Under the head of "Total votes received," opposite the name of Levant L. Rogers, 2.

Under the head of "Total straight votes," opposite the name of Edwin N. Dingley, 22.

Under the head of "Total split votes," opposite the name of Edwin N. Dingley, 23.

Under the head of "Total votes received," opposite the name of Edwin N. Dingley, 45.

In Exhibit 16, township of Bellevue, county of Eaton, Mich., being the poll book, I desire to have the record show that the blank forms for the officers of inspectors of election to sign and make oath, that not one of them is filled out in any particular. I show the same to counsel for the contestee and ask him to challenge the correctness of my statement, in this regard, upon the record.

Mr. MAYNARD. I will not take time to examine them, but will object to it as incompetent and immaterial and no evidence that the officers did not take the constitutional oath upon that occasion.

Mr. ADAMS. I offer in evidence Exhibit 36 entitled "Statement book of the general election held on Tuesday, November 5th, A. D. 1912, in the third ward, Eaton Rapids, County of Eaton, Mich.," which statement book is produced by the county clerk of Eaton County as a part of the election returns held on Tuesday, November 5, 1912, and read from page 16, as follows:

" CERTIFICATE.

" STATE OF MICHIGAN,

" *County of Eaton, ss.*

" We do hereby certify that the foregoing is a correct statement of the votes given in the third ward of the city of Eaton Rapids, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

" In witness whereof we have hereunto set our hands at the third ward, city of Eaton Rapids, said county and State, this 6th day of November, A. D. 1912.

" CLAUDE C. SMITH,

" GEORGE H. SEELYE,

" S. A. ANNIS,

" F. S. LEIGHTON,

" *Inspectors of Election.*"

I offer in evidence statement book of the general election held Tuesday, November 5th, 1912, in the third ward of the city of Charlotte, Eaton County, Mich., marked Exhibit 37, and read from page 16:

" CERTIFICATE.

" STATE OF MICHIGAN,

" *County of Eaton, ss:*

" We do hereby certify that the foregoing is a correct statement of the votes given in the third ward of the city of Charlotte, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the city of Charlotte, said county and State, this ——— day of November, A. D. 1912.

" E. DUNNING,

" J. B. DOWDIGAN,

" GEO. J. BARNEY,

" *Inspectors of Election.*"

We offer in evidence Exhibit 38, statement book of the general election held on Tuesday, the 5th of November, A. D. 1912, at the fourth ward of the city of Charlotte, Eaton County, Mich., and read from page 16:

" CERTIFICATE.

" STATE OF MICHIGAN,

" *County of Eaton, ss:*

" We do hereby certify that the foregoing is a correct statement of the votes given in the fourth ward of the city of Charlotte, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the city of Charlotte, said county and State, this 5th day of November, A. D. 1912.

" C. A. POPE,

" J. A. GREENMAN,

" MARION PORTER,

" *Inspectors of Election.*"

I read from Exhibit 39, Statement book of the general election held on Tuesday, November 5, A. D. 1912, in the first ward in the city of Charlotte, county of Eaton, State of Michigan, and read from page 16 as follows:

" CERTIFICATE.

" STATE OF MICHIGAN,

" *County of Eaton, ss:*

" We do hereby certify that the foregoing is a correct statement of the votes given in the first ward of the city of Charlotte, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the city of Charlotte, said county and State, this 5th day of November, A. D. 1912.

" A. A. HOUGHTALING,

" MYRON HAWKINS,

" F. F. FLAHERTY,

" *Inspectors of Election.*"

All the election returns offered in evidence to-day I desire the record to show are from the election returns which were produced here before the commissioner taking the depositions by the county clerk of the county of Eaton as being the election returns of the election held in the various localities and voting places in the county of Eaton on the 5th day of November, 1912.

Mr. MAYNARD. Each and every one are objected to as incompetent and immaterial and not the best evidence.

Mr. ADAMS. Will you stipulate as to the witnesses who have been sworn and the number of miles they have traveled?

Mr. MAYNARD. Yes; we can draw a stipulation and date it as of to-day. You may make a list of your witnesses, the number of miles they have traveled, and the time they have attended, and take it before the commissioner and swear to it and he will O. K. it.

MARCH 7, 1913.

AGNES M. STERLING, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Is it Mrs. Sterling or Miss Sterling?—A. Miss Sterling.

Q. Miss Sterling, you live in Marshall, Calhoun County, do you?—A. Yes, sir.

Q. Do you hold any official position in this county?—A. Yes, sir.

Q. What is it?—A. Deputy county clerk.

Q. Now, how long have you held that office?—A. About a year.

Q. Were you the deputy county clerk on the 5th of November last?—A. Yes, sir.

Q. Have you or not been ever since that deputy county clerk?—A. Yes, sir.

Q. Who is the county clerk of Calhoun County at the present time?—A. Mr. Cady.

Q. How long has Mr. Cady been county clerk?—A. Since the 1st of January.

Q. Who was clerk of this county in the year 1912?—A. Ray E. Hart.

Q. Mr. Cady was elected and took the office the 1st of January, 1913?—A. Yes, sir.

Q. Is there in the possession of the county clerk of this county the returns of the election board that officiated at the last, November 5, 1912, general election in this State the return of the board in your possession?—A. Yes, sir.

Q. As deputy county clerk?—A. Yes, sir.

Q. State whether there is in the possession of the deputy county clerk a record of the proceedings of the board of county canvassers of the canvass of the votes of the general election held November 5, 1912, in this county of Calhoun, particularly the second precinct of the second ward of the city of Battle Creek, and have you or not those records now before you before the commissioner taking this testimony?—A. Yes, sir.

Q. Those are the ones you produced?—A. Yes, sir.

Q. I notice here that they were returned in an envelope which is entitled "Election returns, Battle Creek, second precinct, second ward, Calhoun County, Mich., addressed to the county clerk, Marshall, Calhoun County, Mich., filed November 8, 1912. Ray E. Hart, Calhoun County clerk"; is that one of the files and records of your office that you have just referred to and that you produced?—A. Yes, sir.

Q. I show you Exhibits 41, 42, and 43, Exhibit 41 being the poll book of the general election held on Tuesday, the 5th day of November, 1912, in the second precinct in the second ward of Battle Creek, and 42 being the tally-sheet book of the same general election of the same precinct and ward, and 43 being the statement book of the general election held on the same day and in the same precinct, and ask you now to state whether or not—and Exhibit 41 is the envelope in which they were returned—those exhibits, namely, 41, 42, and 43, are the contents of the envelope 40 or not?—A. Yes, sir.

Q. You may state whether those exhibits that I have called your attention to were returned as election returns from that ward and precinct to the county clerk of Calhoun County and filed with the clerk November 8, 1912?—A. Yes, sir.

Q. I call your attention to an envelope, marked "Exhibit 44," that you have produced here, addressed to the board of county canvassers, care the judge of probate or the register of probate; this envelope contains the returns, statement of votes, and the result of the election held in Battle Creek, second precinct, second ward, Calhoun County. I also call your attention to Exhibit 45, entitled "Poll book of the general election held Tuesday, November 5, 1912, second ward, second precinct, Battle Creek," and Exhibit 46, which is the tally-sheet book of the general election held Tuesday, November 5, 1912, in the second precinct, second ward, city of Battle Creek, county of Calhoun, and Exhibit 47, entitled "Statement book of the general election held November 5, 1912, in the second precinct, second ward, of the city of Battle Creek, county of Calhoun," and ask you now to state whether those four exhibits, which I have just called your attention to in this question, were received at any time and came into the pos-

session of the county clerk of Calhoun County?—A. They came into the possession of the county, probably, from the canvassing board.

Q. When?—A. After they completed the canvass.

Q. That was held after the November 5, 1912, election?—A. Yes, sir.

Q. I call you attention next to a book that is marked on the back, "Record of elections, Calhoun County," and ask you what that book is?—A. The county canvassers' return of the votes.

Q. The return of the canvass of the votes in Calhoun County, which votes were cast at the November 5, 1912, election?—A. Yes, sir.

Q. I call your attention to page 132 of that record, and ask you whether that page contains the canvass as made by the board of county canvassers of the votes cast for Representative in Congress at the general election held November 5, 1912?—A. Yes, sir.

Q. You may state whether this book record of elections is or is not the record in the office of the county clerk of Calhoun County, Mich.—A. It is.

Mr. ADAMS. That is all of this witness.

Mr. FRANKHAUSER. No cross-examination at the present time.

GEORGE W. SCHNEIDER, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant, as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Schneider, where do you reside?—A. Albion, Mich.

Q. Is that, or not, in Calhoun County?—A. It is.

Q. How long have you lived in Albion in this county?—A. Twenty-five or thirty years.

Q. What is your age?—A. I am 51.

Q. Were you a member of the board of county canvassers, the board that counted the votes that were cast at the November 5, 1912, general election?—A. I was.

Q. The board that canvassed the votes for Representative in Congress at the November 5, 1912, general election held in the county of Calhoun, State of Michigan?—A. Yes, sir.

Q. Did you act on that board in the canvass of the votes cast for Representative in Congress at that election?—A. I did.

Q. Who were the other members of the board?—A. Charles Andrews and Franklin W. Dickey.

Q. Yourself and Mr. Andrews and Mr. Dickey acted on the board of county canvassers in canvassing the votes at that election, did you?—A. We did.

Q. Where did you meet?—A. In this room, in Marshall, Mich., at the court house.

Q. When did you meet?—A. I will have to refer to the minutes; November 12.

Q. November 12, 1912?—A. Yes, sir.

Q. That was the day you met?—A. That is the day we met; yes, sir.

Q. Did the board of county canvassers which met on the 12th day of November, 1912, as you have stated, did it or not canvass the votes that were cast for the various candidates for Representative in Congress, in the county of Calhoun?—A. We did.

Q. I wish you would state, Mr. Schneider, just what occurred in connection with the canvass of the votes for the candidates for that office when your board canvassed that vote—that is, the office for Representative for Congress.—A. I don't know as I quite understand your question; as to the election entire?

Q. No; just the Representative in Congress.—A. You mean throughout the whole county?

Q. Just to this precinct.—A. You haven't referred to that.

Q. I mean that is applicable or relate to the votes cast in the second precinct of the second ward of Battle Creek.—A. Well, when we received the box from the county clerk, he advised us that the number of votes returned were less than the number cast at the election, and after looking the report of the election board over and comparing it with the poll list, we also knew that there must have been more votes cast than was returned. The county canvassing board asked the advice of the legal authority of this county, the prosecuting attorney, and we were advised to call this election board of that precinct to Marshall and ask them to correct their return. We did so. We ordered them to Marshall with their ballot boxes. I opened that box as chairman of the board of canvassers. There was no data in the box unless we used the figures that were

on the tickets, on the rolls of tickets, which we did use in correcting the returns according to those figures which we found on the back of each roll. A roll of tickets like that [indicating] we would see so many "straight D." and so many "straight R." and so many "straight N. P." and so many "straight S." which we look for Democrats, Republican, National Progressive, and Socialist tickets. Later the board of canvassers were convinced that we had exceeded our authority, that we had no right to molest the tickets in those boxes, so we again called the board to Marshall and the boxes were there again opened and the report was corrected by a blotter that the box contained that was made by one of the clerks at that election. The red figures in that book indicate the changes that were made at that time.

Q. What election returns did you have before your board of county canvassers at the time you canvassed the vote for Representative in Congress that were cast in the second precinct of the second ward of Battle Creek?—A. What did we have originally before us?

Q. Before you called the election board before your board?—A. The black figures in that book.

Q. What particular books—election returns—did you have before you, if any?—A. We had the statements as returned by the election board.

Q. I call your attention now to Exhibits 40, 41, 42, and 43, which were produced here by the deputy county clerk this morning, and ask you to state whether all those exhibits I now hand you for your examination were or were not before your board when you first began the canvass of the votes cast for Representative in Congress at the November 5, 1912, election in the second precinct, second ward, Battle Creek?—A. They were; yes, sir.

Q. Now this Exhibit 40 is an envelope, is it not?—A. Yes, sir.

Q. Addressed to the county clerk, Marshall, Calhoun County?—A. Yes, sir.

Q. Is there a filing marked on there of the county clerk which reads, "Filed November 8, 1912, Ray E. Hart, Calhoun County clerk"?—A. It is.

Q. When you got that envelope where were these other three exhibits you have in your hand—41, 42, and 43?—A. They were in this envelope.

Q. Was the envelope sealed or unsealed when it came into the possession of the board of county canvassers?

Mr. MAYNARD. Objected to as irrelevant and immaterial.

The WITNESS. The envelopes, all of them returned from the county clerk, were open.

Q. I understand you to say that the board of county canvassers, of which you were a member at the time mentioned, asked the election board of the second precinct, second ward, Battle Creek, to bring before your board of canvassers the ballot box that was used at the election held in that precinct on November 5, 1912?—A. Yes, sir.

Q. And that election board brought that ballot box before your board of county canvassers, did it?—A. Yes, sir.

Q. When did the election board of that precinct bring this ballot box that was used at that election before your board?—A. On the 13th of November, 1912.

Q. Was that the first time at that particular meeting of the board of county canvassers that that election board brought that ballot box before your board of canvassers or not?—A. It was.

Q. You stated that the election board of that precinct, second precinct, second ward, Battle Creek, again appeared before the board of county canvassers: is that correct?—A. Yes, sir.

Q. At that second appearance of that election board before your board of county canvassers, was the ballot box produced before your board by that election board?—A. It was.

Q. When was that ballot box by that election board of that precinct in Battle Creek a second time produced before the board of county canvassers?—A. I think the date of that is here [referring to book]. The 19th day of November, 1912.

Q. Now when that ballot box was brought before your board of county canvassers by that election board, you opened it?—A. I did.

Q. Did you find anything in that ballot box besides the ballots?—A. We found a few scraps of paper, but none of them were the figures from which this report was corrected.

Q. The first time I am referring to.—A. No, sir; we didn't find anything: we took the tickets.

Q. Was there anything else in the box besides the tickets the first time you opened the ballot box that you noticed or found?—A. Well, these scraps of

paper in the bottom we didn't molest, didn't look for; we didn't think there was anything there we wanted to see.

Q. Did you find any tally sheet or poll book?—A. No, sir.

Q. Or statement book in that ballot box the first time your board of county canvassers opened it?—A. No, sir.

Q. Was there anything put back in that ballot box when the box was before your board of county canvassers other than what you took out of it when you opened it on this first occasion, when the ballot box came before the board of county canvassers?—A. Not to my knowledge.

Q. What was done with the ballot box when the ballots were placed in it that first time?—A. It was sealed and placed in the hands of the city clerk at Battle Creek.

Q. Was the ballot box locked before being sealed or after being sealed, or locked at all on that first occasion when before the board of county canvassers?—A. I couldn't say; I don't think it was locked.

Q. You don't know?—A. I don't know.

Q. Now, when your board of county canvassers first met, November 12, 1912, to canvass this second precinct of the second ward of the city of Battle Creek were Exhibits 41, 42, and 43, so far as your record shows and those exhibits show anything with reference to the office of Representative in Congress, then in the condition that they are now here or not [handing witness exhibits]?—A. No, sir; they are not. Your question was when we first met?

Q. Yes; when they first came into the possession of the board of county canvassers from the county clerk's office whether they were then in the same condition that they are at this time?—A. No, sir; they were not.

Q. Referring again to Exhibit 42, tally sheet of the general election held on November 5, 1912, in the second precinct of the second ward, city of Battle Creek, I notice that opposite the name of John M. C. Smith—opposite the heading entitled "Representative in Congress," and opposite which entitling "Representative in Congress" John M. C. Smith's name appears, and under the heading, opposite the name of John M. C. Smith, which heading is "Total straight votes," there now appear to be the figures 66. State whether, when this exhibit came into the possession of the board of county canvassers when it first met, before the election board appeared before your board of county canvassers, those figures 66 were there in that place?—A. They were not.

Q. Opposite the name of John M. C. Smith, under the heading "Total split votes," I notice the figures 31. You may state whether when your board of canvassers first came into possession of this exhibit from the county clerk's office the figures 31 were in that place where they now are.—A. They were; yes, sir.

Q. Opposite the same name, John M. C. Smith, Representative in Congress, under the heading "Total votes received," I notice the figures 31 are crossed out. Were those figures crossed out when you first came into the possession of this exhibit as a member of the board of county canvassers?—A. They were not; no, sir.

Q. Were the figures 31 in that column there when you first came into possession of this Exhibit 42?—A. They were.

Q. I notice right over the figures 31 in that column "Total votes received," opposite the name of John M. C. Smith, now appear the figures 97. Were those figures in that column opposite that name when this Exhibit 42 first came into possession of your board of county canvassers?—A. They were not; no, sir.

Q. When were the figures 31 in that column of "Total votes received," opposite the name of John M. C. Smith, crossed out?—A. On the 19th day of November.

Q. Who put the figures 97 in that column last inquired about, do you know?—A. One of the members of the election board of said precinct.

Q. Do you know what member?—A. I do not.

Q. That crossing out of the 31 in that column and placing in the column of the figures 97 was done, you say, on the 19th day of November, 1912?—A. Yes, sir.

Q. Did your board of county canvassers say to that board that those changes were sanctioned?—A. Yes, sir.

Q. Opposite the name Claude S. Carney, Representative in Congress, under the heading "Total split votes," I notice 23. Were those figures in there 38 there in that place when Exhibit 42 first came into the possession of your board of county canvassers?—A. They were not.

Q. When were those figures 38 placed in that column?—A. On the same day—the 19th day of November.

Q. Opposite the name of Claude S. Carney, Representative in Congress, under the heading "Total split votes," I notice 23. Were those figures in there when your board of county canvassers first got this Exhibit 42?—A. They were.

Q. Opposite the name of Claude S. Carney, under the heading "Total votes received," I notice the figures 23. Were those figures in there when your board of county canvassers first got Exhibit 42?—A. They were.

Q. I notice that there are lines drawn across the figures 23. When were those lines drawn across those figures on Exhibit 42?—A. On the 19th day of November.

Q. I notice in the same column the figures 23 over the figures 61. Were those figures in there when your board of county canvassers first got Exhibit 42?—A. They were not.

Q. When were they put in there?—A. At the same time—on the 19th of November.

Q. Was there, at the time your board of county canvassers made the changes to which I have just referred in Exhibit 42, any contest made by writing or otherwise before your board of county canvassers with reference to the office of Representative in Congress?—A. Nothing in writing.

Mr. FRANKHAUSER. I object to the question as assuming that his board made the change. I understand the election board made the change. I want the objection to appear before the answer.

The WITNESS. By our order.

Q. There was no contest on through which contest your board of county canvassers assumed to recount the ballots, was there, at that time?—A. Well, I—

Q. (Interrupting.) No petition was filed before your board of county canvassers for a recount of those ballots?—A. No, sir.

Q. With reference to the office of Representative in Congress?—A. No petition was filed.

Q. No petition presented before your board of county canvassers to that effect; that is, to have a recount of the ballots for the office of Representative in Congress? I mean of the votes cast at the November 5, 1912, election?—A. No written contest—no written demand of contest—was filed.

Q. These changes in this Exhibit 42 which you have testified about with reference to the office of Representative in Congress were not made when that election board first came before your board of county canvassers?—A. Not on this book; they were made on the other book.

Q. What other book?—A. One of the statements—one of the statements—the first time. We made the figures in red ink. This is in black.

Q. You mean the figures in Exhibit 42 by this one?—A. Yes, sir; 42.

Q. On Exhibit 42 these changes were not made in these figures until November 19?—A. No, sir.

Q. When that election board was first before your board of county canvassers, did you make any changes on the statement book, Exhibit 43, so far as the office of Representative in Congress is concerned?—A. We did. This is 43? Yes, sir; we did.

Q. Now, I call you attention to Exhibit 43, which is the statement book of the general election held November 5, 1912, in the second precinct of the second ward of the city of Battle Creek, Calhoun County, to page 7 of that exhibit, and I notice there that, under the office of Representative in Congress, appear the names of John M. C. Smith and Claude S. Carney, the names John M. C. Smith and Claude S. Carney being written in black ink; and opposite the name of John M. C. Smith there is written in black ink 31. Is that correct?—A. That is as the book appeared when it first came to us.

Q. Then appears the name John M. C. Smith, "Votes received," 31, and the 31 is written out in writing?—A. Yes, sir.

Q. Opposite the writing 31 and opposite the name of John M. C. Smith are the figures 31?—A. Yes, sir.

Q. That is correct?—A. Yes, sir.

Q. Was there anything else on that line opposite the name of John M. C. Smith when you first got that Exhibit 43 before your board of county canvassers?—A. There was not; no, sir.

Q. The name Claude S. Carney is written in ink under "Office for Representative in Congress" in this Exhibit 43?—A. Yes, sir.

Q. Opposite Claude S. Carney's name appear in writing the words "twenty-three"?—A. Yes, sir.

Q. Opposite the writing 23, opposite the name of Claude S. Carney, also appear the figures 23 in black ink?—A. Yes, sir.

Q. Did anything else appear on that line where Claude S. Carney's name appears on this exhibit when Exhibit 43 first came before your board of county canvassers?—A. No, sir.

Q. I call your attention now to this Exhibit 43 on page 7, opposite the name of John M. C. Smith, and next after the writing "31," written out in full in black ink, to be written in there in red ink, the figures 97 followed by a dash and followed by the figures 66. When were those figures 97-66, the figures 66, placed opposite the name of John M. C. Smith on this Exhibit 43?—A. November 13.

Q. On this Exhibit 43, opposite the name of, or on the line rather, that Claude S. Carney's name appears under "Office for Representative in Congress," and after the word "twenty-three" appear in red ink the figures "61"—then the figures "38." When were those figures written in there on that exhibit opposite the name of Claude S. Carney?—A. On the 13th day of November.

Q. Those figures opposite Claude S. Carney's name to which I have just referred, were they or not in that book in red ink when Exhibit 43 first came into the possession of the board of county canvassers?—A. They were not; no, sir.

Q. Were those figures "97"-66 opposite the name of John M. C. Smith under the heading "Office for Representative in Congress" in there, in this exhibit when this Exhibit 43 first came into the possession of your board of county canvassers?—A. They were not; they were not in.

Q. Who made these figures in red ink, to which I have referred here in which appears opposite the names of John M. C. Smith and Claude S. Carney "Office Representative in Congress" in this Exhibit 43?—A. Ray E. Hart, county clerk.

Q. Who directed Ray E. Hart, county clerk, to put those figures in that Exhibit 43 in red ink, to which I have called your attention?—A. Why, I rather think the canvassing board directed that to be put in in red ink.

Q. Where did you get the information from—where did the board of county canvassers get the information from that caused your board of county canvassers to place those figures that are in red ink on Exhibit 43, in that exhibit?—A. From the rolls that were taken out of the ballot box marked with a number and letter; that is, for illustration we took a roll out of the box and it was marked "66R" and another one—

Q. (Interrupting.) Roll of what?—A. Roll of ballots; we supposed they were ballots, we didn't open them. Another one was marked "38D."

Q. The roll that was marked "38D," what was that roll; do you know? You didn't open it, did you?—A. No, sir.

Q. You don't know whether ballots or not, do you?—A. No, sir.

Q. So you took your information from some figures that were on a roll of paper that was in the ballot box?—A. Yes, sir. I want to make a correction in my testimony to this effect, that when the ballot box was first brought before the board of county canvassers by the election board of the second precinct of the second ward of the city of Battle Creek I instructed the election board to open the ballot box and I think one of the members of the election board opened the ballot box and that I did not open it myself.

Q. When you first took the ballots out of the ballot box in question—that is, when your board of county canvassers had that box opened and the ballots were taken out—there was no count made in the presence of the board of county canvassers of the ballots contained in that box?—A. No, sir.

Q. All the ballots were taken out of the box, however, the first time the ballot box was brought before the board?—A. All the rolls of ballots were taken out.

Q. Were the rolls of ballots untied?—A. No, sir.

Q. Were they tied up in rolls?—A. Yes, sir.

Q. So that all the information you got then out of that ballot box there, before you took from it, you obtained from some figures that were on some of those rolls that were taken out of the ballot box?—A. Yes, sir.

Q. And from the figures that were on the back of those rolls, the first time you took those ballots out of that ballot box before your board of county canvassers, you put these red figures opposite the names of John M. C. Smith and Claude S. Carney on this Exhibit 43, did you?—A. Yes, sir; they were put there. I didn't put them there.

Q. They were put there by Ray E. Hart?—A. Yes, sir; as clerk of the board of county canvassers.

Q. Mr. Hart was at that time county clerk of Calhoun County?—A. Yes, sir.

Q. His politics are Republican?—A. Yes, sir; I expect so.

Q. He was elected as county clerk on the Republican ticket, was he not, for the term he was then acting or filling?—A. Yes, sir.

Q. Did you at the time this ballot box first came before your board of county canvassers, or at any time before this ballot box came before your board of county canvassers the second time, make any corrections on Exhibit 42 opposite the names of the candidates for Representative in Congress?—A. No, sir.

Q. Was Claude S. Carney a candidate for Representative in Congress on the Democratic ticket at that November 5, 1912, election; did he come before your board of county canvassers at any time at its meeting?—A. Yes, sir; he did.

Q. When first?—A. Why, I think the day following this 13th day of November; I think it was the next day.

Q. These figures on the statement book, Exhibit 43, which appear there in red ink, to which I have referred in previous questions, which appear in red ink opposite the name of Claude S. Carney opposite the "Office of Representative in Congress," had been placed upon this Exhibit 43 before Mr. Carney came before your board of canvassers?—A. Yes, sir.

Q. Now, at that time when Mr. Carney came before the board of county canvassers he made an objection, didn't he, to your board of county canvassers making any change in the figures in the statement book, Exhibit 43?—A. Why, he objected to the source of information we made the change on.

Q. He also objected at that time, didn't he, that your board of canvassers were not the proper tribunal before which any change could be made in the returns from the election board of the second precinct, second ward of Battle Creek?—A. I think he did; yes, sir.

Q. Now, when this ballot box came before your board of county canvassers the second time, that was on the 19th day of November, 1912?—A. Yes, sir.

Q. Was that ballot box opened again?—A. It was.

Q. Who opened it?—A. Why, I think the same people—that is, the election board.

Q. The election board that had acted in holding the election in that precinct and ward?—A. Yes, sir.

Q. By whose direction, if by anyone's, was that ballot box opened at that time?—A. By the direction of the board of county canvassers.

Q. At whose request? Who requested it to be opened at that time?—A. Well, I guess I will have to say Congressman Smith.

Q. Was John M. C. Smith here at that time?—A. Yes, sir.

Q. The same Smith whose name appears here as a candidate for the office of Representative in Congress?—A. Yes, sir.

Q. He was before your board at that time?—A. Yes, sir.

Q. At the time that ballot box was opened the second time before your board of county canvassers?—A. Yes, sir.

Q. After the ballot box had been taken away from the board of county canvassers, after it first came here, who requested the election board of the second precinct of the second ward of Battle Creek to again produce that ballot box before your board of county canvassers?—A. I don't understand the question.

Q. You had the ballot box come before the board of county canvassers the second time?—A. By order of the board of county canvassers.

Q. At whose, if anybody's, request did the board of county canvassers request that that ballot box be produced before it a second time?—A. The representative of Congressman Smith.

Q. Who made that request?—A. Why, I think that is the gentleman.

Q. Give his name.—A. John C. Davis.

Q. Who was the other gentleman here at that time?—A. Mr. Huggett, of Charlotte.

Q. Was George Huggett, of Charlotte, here at that time?—A. This gentleman says that was his name; I don't know what his name was.

Q. Do you understand that the name of the other gentleman who was here with John C. Davis was Mr. Huggett of Charlotte, Mich.?—A. I couldn't answer positively; Mr. Davis says that was the man; I know there was a man here from Charlotte; he was a stranger to me, but his name has passed from me, so I couldn't say.

Q. John C. Davis lives where?—A. In Battle Creek.

Q. Was he, so far as you know, connected with any political organization in the county of Calhoun at the time of the November 5, 1912, election?

Mr. MAYNARD. We object to that as incompetent and immaterial.

The WITNESS. I understand so.

Q. What?—A. He was a Republican.

Q. Now, who came here with the ballot box the second time before the board of county canvassers?—A. The city clerk of Battle Creek and the three members of the board who signed this report.

Q. That is, of the election board of this precinct, do you mean?—A. Yes, sir; you will find it on the book.

Q. What was the city clerk's name?—A. Thomas Thorne.

Q. Was he a member of the election board where Harry Christian, F. C. Christian, and W. D. Wilson were?—A. Yes, sir.

Q. Who else if anyone, came with these gentlemen you have mentioned at the time that ballot box was brought the second time before the board of county canvassers?—A. I don't know of anyone else.

Q. When did John C. Davis get here?—A. He was here.

Q. Did he come with the men who brought the ballot box?—A. I think he was here before they came.

Q. Was Congressman Smith here at the time the ballot box came or did he come in at the same time the ballot box was brought here?—A. He was here before; he came here in the morning.

Q. Now, when did you request the bringing of this particular ballot box before the board of county canvassers the second time? How long before it came here the second time?—A. Why, in the forenoon, I think, they were sent for and they appeared in the afternoon at 1 o'clock. They appeared that afternoon. Those little details I can't remember. I think it was ordered in the morning and brought here in the afternoon.

Q. Was that box brought over here or not—ordered brought over here by the board of county canvassers after a request had been made to your board to have it brought here?—A. It was; yes, sir.

Q. That request to have it brought over here the second time was made by whom?—A. Why, by the representative of Mr. Smith.

Q. Do you remember who made the request?—A. I do not.

Q. Mr. Smith was here before your board when that request was made?—A. I think so.

Q. Who were the gentlemen here whom you say were the representatives of Mr. Smith at the time that request was made?—A. Mr. Davis and a gentleman from Charlotte—Mr. Huggett—and Mr. Smith.

Q. On a request made by those gentlemen to your board of county canvassers, you, the board of county canvassers, ordered that ballot box to be a second time brought before the board of canvassers?—A. Yes, sir.

Q. State whether that ballot box was or was not opened the second time before your board of county canvassers in the presence of Mr. Davis, Mr. Huggett, and Mr. Smith, the latter a candidate on the Republican ticket for Representative in Congress?—A. Yes, sir.

Q. Was Claude S. Carney here at that time—the candidate for Representative in Congress on the Democratic ticket?—A. He was not; no, sir.

Q. Was there any representative before your board at the time this ballot box was opened the second time, any representative of Mr. Carney's present before the board, that you know of?—A. The chairman of our Democratic committee was present.

Q. He was the only man who was present, besides those you have mentioned and your board and the other men who brought the ballot box, and the city clerk of Battle Creek, at that time?—A. I think there were more present in the room.

Q. Mr. Carney's supporters, do you mean, or more men?—A. More men.

Q. Was there any notice given to Mr. Carney by your board of county canvassers that the ballot box would be produced before the board of county canvassers that second time?—A. No, sir; not from the board, anyway.

Q. Did any such information come to your board—that Mr. Carney had been notified that this ballot box was going to be opened the second time by your board?—A. No, sir.

Q. Now, were there any arguments made before the board of county canvassers at the second opening of that ballot box with reference to changing these figures, as they were contained in black ink, on these election returns

from that second precinct of the second ward of Battle Creek?—A. No arguments; no, sir.

Q. Did the prosecuting attorney of Calhoun County appear before the board of county canvassers at that time?—A. Not the second time; no, sir. He appeared before the board the first time.

(Whereupon a recess was taken until 1 o'clock p. m., Thursday, March 7, 1913.)

GEORGE W. SCHNEIDER was recalled and further testified on behalf of the contestant, as follows:

Direct examination by Mr. ADAMS:

Q. I call your attention now to this book produced by the deputy county clerk and marked on the back, "Record of elections, Calhoun County," to page 132 and ask you to examine that and tell me whether that is the finding of the board of county canvassers of the votes cast for the different candidates for Representative in Congress at the November 5, 1912, election, as determined upon by your board of county canvassers of which you were a member?—A. Yes, sir.

Q. I call your attention now to this book last referred to, to page 132, under the heading "Statement of votes given in the several townships and wards in the county of Calhoun at the general election held on Tuesday, November 5, 1912," under the heading also "Representative in Congress" and ask you to read from that book and tell me what that book shows as to the number of votes cast in the second precinct of the second ward, Battle Creek, for John M. C. Smith, for Representative in Congress.—A. Ninety-seven votes for John M. C. Smith and 61 votes for Claude S. Carney.

Q. When were those figures that you have just read put upon this page of this book?—A. Well, that was during the time of the sitting of the board of county canvassers.

Q. Were those particular figures put upon that particular book which you have just read from before or after the ballot box was produced before the board of county canvassers of Calhoun County the second time?

Mr. MAYNARD. That is objected to as incompetent and immaterial.

The WITNESS. After.

Q. These figures on this book to which your attention has been called and from which you have just read were put on that book and taken from the figures that are in red ink in Exhibit 43, the statement book of the general election held in the second precinct, second ward, Battle Creek, County of Calhoun, were they not?—A. They were.

Q. They were taken—the figures you have just read, from this record of elections on page 132—were taken from the figures which were placed on Exhibit 43, after your board of canvassers convened, were they not?—A. Well, what do you mean after the board of canvassers convened?

Q. After they convened?—A. Yes, sir; it was between the 12th of November and the time they adjourned.

Q. If you had a canvass of the vote for John M. C. Smith for Representative in Congress as that vote was registered and recorded in the statement of votes in the book entitled "Statement Book of the General Election held November 5, 1912," Exhibit 43, there would have appeared upon this record of election, page 132, under the name of John M. C. Smith, the figures "three" "one," or 31, in place of the figures 97.

Mr. FELLOWS. We object to that as calling for the conclusion of the witness.

The WITNESS. Yes, sir.

Q. If you had canvassed the vote opposite the name of Claude S. Carney, as contained in the statement book of the general election held November 5, 1912, opposite the name of Claude S. Carney, as the figures were in that last-named exhibit at the time that this Exhibit 43 came into the hands of the board of county canvassers, there would have appeared on this book, record of elections, page 132, under the name of Claude S. Carney for this particular precinct in question, the figures "two" "three," or 23, in place of the figures 61, which are now shown to be under the name of Claude S. Carney for that particular precinct, in your canvass of the votes?

Mr. FELLOWS. We object to that as calling for a conclusion and that the record is the best evidence.

The WITNESS. Yes, sir.

Q. So when you made your canvass of the votes cast for John M. C. Smith as Representative in Congress and for Claude S. Carney, Representative in Congress, you did not canvass that vote for those two candidates on the returns as they were contained in Exhibit 43, when that exhibit first came into the hands of your board of county canvassers, did you?—A. No, sir.

Q. The canvass you made then finally for those two candidates for the office of Representative in Congress was made upon figures which your board of county canvassers caused to be made in this return of this election board of this particular precinct, and made after that return was made and filed with the county clerk of Calhoun County?—A. Yes, sir.

Q. The canvass of that vote for the office of Representative in Congress, as far as this second precinct in the second ward of the city of Battle Creek is concerned, was made, was it not, upon figures that you found upon some rolls of ballots or papers that were taken from the ballot box of that election precinct when that ballot box was before and was opened in the presence of the board of county canvassers at that meeting mentioned?—A. No; I think not.

Q. What were those figures made from—your final figures?—A. Why, the board settled upon those figures after the second calling of the election board to Marshall, and those figures were found upon a blotter that was in the box; that was made by one of the election clerks.

Q. That blotter was no part of any of the returns or any of the records, as far as you know, that the statute of the State of Michigan required the election board to make out and put in the ballot box?—A. No, sir.

Q. It was not, was it?—A. It was not.

Q. It was not signed by anybody?—A. No, sir.

Q. Was there any statement book, tally-sheet book, or poll book in that ballot box that you found, or your board found, at either of the times when this ballot box was opened and the ballots taken out in the presence of the board of county canvassers?—A. I think there was nothing found that would lead us to any result.

Q. No; that is not the question.—A. There was no statement book; the board—

Mr. FELLOWS. I object to counsel interrupting the witness before he has completed his answer.

Q. The question is specific as to whether or not any one of these three named books that I mentioned in this question were found in the ballot box at either of those meetings when the ballot box was before your board of county canvassers, the statement book, tally-sheet book or the poll book, either or any of them, in the ballot box at those times?—A. I don't think there was, and still there might have been a tally sheet, but I do not think there was; there was no statement book; that I am positive about. I didn't see any book there, any regular book, that we could acquire any figures from to base our figures on aside from the blotter.

Q. Describe this blotter.—A. It was a little piece of paper, perhaps 10 inches square; one of the election commissioners said he made it while they were counting the ballots, and he thought there would be Republican, 50 straights and 31 splits, and the Democrat, which was next on the ticket, 38 straights and 23 splits, and so on down through the ticket.

Q. Was that blotter signed when you found it in the ballot box—did it have the signatures of anybody upon it?—A. No, sir.

Q. In making your canvass of the vote, upon what figures did you make your canvass?—A. Upon the figures found on that blotter.

Q. Then the figures in this statement book which are in red ink opposite the name of John M. C. Smith and under the name of Claude S. Carney, Representative in Congress, both figures in red ink opposite Mr. Carney's name, I mean, were not made from that blotter?—A. No, sir; they were made from the figures that were on the rolls of ballots taken out of the ballot box.

Q. And from the figures that you obtained from the rolls of ballots taken out of that ballot box and from the figures on that blotter that was taken out of that ballot box by the board in the presence of the board of county canvassers, did you or not from those figures determine your canvass of the votes for the office of Representative in Congress as cast at that November 5, 1912, election in the second precinct of the second ward, Battle Creek, Calhoun County, Mich.?—A. We did.

Q. Now, the figures you read from this record of election, Calhoun County, page 132, under the name of John M. C. Smith and under the name of Claude S. Carney, opposite the second precinct, second ward, Battle Creek, Mich.,

namely, 97 under name of John M. C. Smith and 61 under the name of Claude S. Carney, were those figures or not the final canvass of the votes for those two candidates that were cast in that precinct at the general election held November 5, 1912?—A. They are.

Mr. ADAMS. I offer in evidence this record of elections, so much of page 132 thereof which shows the vote for John M. C. Smith and Claude S. Carney, respectively, as canvassed by the board of county canvassers of Calhoun County of the vote cast in the second precinct of the second ward of the city of Battle Creek, Mich., at the general election held on Tuesday, November 5, 1912. I offer in evidence Exhibits 40, 41, 42, and 43.

Mr. FELLOWS. Is it understood the exhibits offered now are from the county clerk's office?

Mr. ADAMS. Yes; I proved that.

Q. This record of election which you have referred to, page 132, state whether or not that was the final canvass of the board of county canvassers of Calhoun County, Mich., of the votes for the candidates for Representatives in Congress at this November 5, 1912, election in the second precinct in the second ward of Battle Creek.—A. Yes, sir.

Mr. FELLOWS I make the suggestion—I don't know whether any arrangements have been made or whether it is understood that these original exhibits are to be forwarded with the testimony when so completed. I make the inquiry so we can have a record of it and find out what the understanding of counsel is. I assume that these being public records there is some question about taking them out of the jurisdiction of the court. That is the only reason why I make the inquiry.

Mr. ADAMS. There is some question about that.

Cross-examination by Mr. MAYNARD:

Q. Mr. Schneider, the canvassing board met the 12th day of November last to canvass the votes for all the officers voted for at the election held on November 5, 1912?—A. Yes, sir.

Q. When you met you said that the county clerk called your attention to some discrepancy in the returns from the second precinct of the second ward of Battle Creek?—A. Yes, sir.

Q. Did you have any other returns there before you besides those that were submitted by the county clerk?—A. No, sir.

Q. Did you receive those directly from the judge of probate?—A. Yes, sir; we had some from the judge of probate's office and the county clerk's office.

Q. Had them both?—A. Yes, sir.

Q. Did you compare them?—A. Yes, sir.

Q. You found them to compare with each other?—A. Yes, sir.

Q. Did they also contain the returns of the vote for President and Vice President of each party?—A. Yes, sir.

Q. Do you know how many parties were named on that ticket in those returns for President?—A. Six—Republican, Democratic, National Progressive, Prohibition, Socialist, and Socialist Labor.

Q. I will ask you to look at Exhibit 42 and see what was the general vote cast for the presidential electors.

Mr. ADAMS. Objected to as irrelevant and immaterial.

Q. Take the first one.—A. Republican, 96.

Q. Are there any more for the Republican electors for President?—A. Yes, sir; 93. They are all 93 except one, and that is 94.

Q. How many votes were cast, as shown by that exhibit, for the office of Vice President?—A. It is just the electors, that is all, that voted for the national ticket.

Q. The next is the Democratic electors for President?—A. Yes, sir.

Q. How many votes were cast for the Democrats?—A. The first one received 67.

Q. Any more?—A. The balance of the 15 are 56.

Mr. ADAMS. I object to that as irrelevant and immaterial and move to strike it out.

Q. State the next one.—A. The next officer on the ticket is the Prohibition electors, 4.

Q. The next ticket?

Mr. ADAMS. Objected to as irrelevant.

A. Socialist, 108.

Q. The next ticket?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. Socialist Labor, 18.

Q. The next is the National Progressive electors?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. The National Progressive electors 91 all through; every man gets 91.

Q. What is the next?—A. Governor.

Q. How many?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. The original returns showed 31.

Q. Does that agree with the returns that were given originally for John M. C. Smith?

Mr. ADAMS. Objected to as incompetent and immaterial, not the best evidence, and calling for the conclusion of the witness.

A. Yes, sir.

Q. The next officer?

Mr. ADAMS. The same objection.

A. Ferris.

Q. What was his vote?—A. Thirty-two.

Q. As originally returned?—A. As originally returned.

Q. Give the vote of the next officer as originally returned.—A. J. B. Leland, 4.

Q. On what ticket?

Mr. ADAMS. In accordance with the original returns of what?

WITNESS. Of course these figures were made later. These figures were made later; in the original returns that was blank.

Q. In any of these where there was no split tickets it is blank?

Mr. ADAMS. How does he know there were no split tickets? I object to it.

Mr. MAYNARD. I will withdraw that question now.

Q. Give them to us right along down.—A. The Socialist ticket, 20.

Q. What is the next?

Mr. ADAMS. The same objection.

A. The National Progressive ticket, 27.

Q. Go on.

Mr. ADAMS. If it may be understood that I have the same objection to all this without making specific objections, on the ground that it is irrelevant and immaterial, if you will concede that he may go on.

Mr. MAYNARD. All right.

A. Socialist Labor, 4; Republican lieutenant governor, 34; Democrat, 19; Socialist, 22; National Progressive, 34; Socialist Labor, 4. Secretary of state: Republican, 33; Democrat, 16; Socialist, 22; Socialist Labor, 4; National Progressive, 38. State treasurer: Republican, 35; Democrat, 19; Prohibition, 0; Socialist, 22; Socialist Labor, 3; National Progressive, 33. Auditor general: Republican, 35; Democrat, 18; Prohibition, 0; Socialist, 22; Socialist Labor, 4; National Progressive, 34. Attorney general: Republican, 35; Democrat, 18; Prohibition, 0; Socialist, 22; Socialist Labor, 4; National Progressive, 34. Commissioner of the State land office: Republican, 35; Democrat, 18; Prohibition, 0; Socialist, 23; Socialist Labor, 3; National Progressive, 34. Justices of the supreme court: Republican, 36; Democrat, 18; Prohibition, 0; Socialist, 22; National Progressive, 35.

Justices of the supreme court, term ending December 31, 1917: Republican, 35; Democrat, 19; National Progressive, 35. Representatives in Congress at large: Republican, 36; Democrat, 19; Prohibition, 0; Socialist, 22; National Progressive, 30. Representative in Congress: Republican, 31; Democrat, 23; Socialist, 21; National Progressive, 22. State senator: Republican, 36; Democrat, 20; Socialist, 22; National Progressive, 31. Representative in State legislature: Republican, 26; Democrat, 31; Socialist, 19; National Progressive, 34. Judge of probate: Republican, 35; Democrat, 33; National Progressive, 21. Sheriff: Republican, 80; Democrat, 11; Socialist, 10; National Progressive, 13. County clerk: Republican, 34; Democrat, 36; Socialist, 21; National Progressive, 22. County treasurer: Republican, 41; Democrat, 18; Socialist, 20; National Progressive, 31. Register of deeds: Republican, 42; Democrat, 19; Socialist, 25; National Progressive, 24. Prosecuting attorney: Republican, 54; Democrat, 32; National Progressive, 19. Circuit court commissioners: Republican, 41 and 39; Democrat, 19 and 18; Socialist, 22 and 22; National Progressive, 31 and 30. Coroners: Republican, 40 and 41; Democrat, 18 and 18; Socialist, 22 and 22; National Progressive, 31 and 31. County surveyor: Repub-

ican, 39; Democrat, 20; Socialist, 22; National Progressive, 32. Drain commissioner: Republican, 40; Democrat, 20; Socialist, 22; National Progressive, 29.

Mr. ADAMS. This is all under my objection.

Mr. MAYNARD. Yes, sir.

Q. The county clerk, when he laid before you this statement, called your attention to the fact that there was a discrepancy in the total vote given for all of these officers, from the governor down, throughout the State, congressional, legislative, and county tickets?—A. Yes, sir.

Q. I show you Exhibit 41 and ask you what the total number of votes are shown to be cast by the poll book?—A. Three hundred and seventy-five.

Q. Take the tally-sheet book and commence at the top of page 7—the office of governor—when you got the election board to come in here how many votes did they determine were straight votes cast for that office?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial for the office of governor.

The WITNESS. Why, they reported 115 votes cast—114 votes.

Q. The total vote for governor?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and hearsay.

The WITNESS. I don't know as they reported any.

Q. After they corrected it?—A. Did you ask me when the books came here?

Q. No.—A. They said there was 66 straight Republican votes and 31 splits.

Q. On that line opposite the name of Mussulman, were the tallies put down one at a time, as is usual in tallying up and in counting votes for any officer?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

The WITNESS. Yes, sir.

Q. How many of those tallies were opposite the name of Amos Mussulman?—A. Thirty-one.

Q. Just 31 tallies?—A. Yes, sir.

Q. In blocks of five?—A. Yes, sir.

Q. They made four straight marks and one mark across the four?—A. Yes, sir.

Q. Making five votes?—A. Yes, sir.

Q. Counting those there were just thirty-one?—A. Yes, sir.

Q. That agrees with what they had him, 31 split votes?—A. Yes, sir.

Q. Now, take the name of Ferris, how many split votes were tallied to him?—Thirty-two tallied to him.

Q. Is that carried out as the total split votes?—A. Yes, sir.

Q. Then those tallies are correct for the split votes?—A. Yes, sir.

Q. It was when it came to you?—A. Yes, sir; it was also in the column of the total votes received. This is the column here of total votes received. This is the column here of total split votes and here is the total votes received.

Q. They agree?—A. They agree.

Q. I want it so it agrees with these tallies.—A. You will not find any mark in that statement; this is the final result as written out.

Q. When the county clerk called your attention to this discrepancy on every officer after you commenced from the governor down, did you make up your mind there had been a mistake, did your board conclude there had been a mistake in the returns?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness as to what the county clerk did and the conclusion of the board of county canvassers in that regard is of no consequence. Legally it was the day of the board of county canvassers to canvass the vote under the circumstances in this case, according to the returns as originally made by the election board making the returns. There was no authority in the board of county canvassers to call the election board before the board of county canvassers and have the ballot box opened or in any way to correct or change the figures from what they were when the returns first came before the board of county canvassers.

(Last question read.)

A. Yes, sir; we did conclude there was something wrong.

Q. Did you then notify the election board from the second precinct, second ward, Battle Creek, to appear before you and correct the returns?—A. We did.

Q. Who came before your board?—A. Two members of the election board.

Q. Do you remember who they were?—A. I think one was Mr. Christian and the other was Mr. Allen or Mr. Wilson; Christian and Wilson. There was but one Christian came the first time; there were two Christians on the board; they were both Republicans—they were all Republicans.

Q. When they came here you say they opened under your direction and orders the ballot box?—A. Yes, sir.

Q. Did you find in this ballot box a lot of unused ballots?—A. Yes, sir.

Q. Did you find some ballots in there that were called instruction ballots?—A. Yes, sir.

Q. Quite a good many papers in the box besides the votes that were rolled up?—A. Yes, sir.

Q. Now, when you found these votes rolled up, were they tied with a string?—A. I think so.

Q. Did anyone of you, or was it done there at all by anyone, untying those bundles or attempting to separate those ballots?—A. No, sir.

Q. You stated that you found some figures on the outside of the rolls, "D-66" or "R-66" and so on. I think they asked you what those referred to. Was there any explanation on behalf of the election board what that meant?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and hearsay.

A. Yes, sir; they said that the ones that were "R" were Republican and the ones that were "D" were Democratic, and the ones marked "C" Socialist, and "C. L." Socialist Labor, and "N. P." National Progressive.

Q. At that time did they amend their returns to comply with those figures that were found on the outside of those ballots?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. Was there one of the rolls marked "R straight"?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

Q. One of the rolls or bundles?—A. Well, sir, I don't know whether I gave that on my direct examination or not; my impression is that that is the way it was marked, but I will not swear positively.

Q. "Republican straight, 66"?—A. Sixty-six R, and so on, etc.

Q. And the Democrats, how many of those were straights?

Mr. ADAMS. I move to strike out the last answer for the reason that it is not the best evidence; and I move to strike out the other answer as to what anything in that ballot box shows, as far as any figures were written are concerned, as not the best evidence and the conclusion of the witness, together with the other objection that I have already made as incompetent, irrelevant, and immaterial.

Q. Of the Democrats, how many votes were straights? Will you look at the book you hold in your hand marked with red ink and see how many votes are credited as straight votes for the office of Republican governor?

Mr. ADAMS. What do you mean, as the record came to the board?

Mr. MAYNARD. No, sir; it appears that these red-ink figures were put on at their second meeting; I am calling attention to the red figures.

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial.

(Last question read.)

A. Well, there is nothing here that is marked.

Q. Can you tell from that book how many was credited?—A. There is nothing marked "Straight" or "Split" here; we found 66.

Q. How many were actually straight?—A. Thirty-eight.

Q. How many for the next office?—A. Four for the Prohibitionists; 85 for the Socialists; 48 for the National Progressives; and 13 for the Socialist Labor.

Q. When you got these red figures added there to the record I understand you that these red figures were made the first day and later you brought the ballot box here?—A. Yes, sir.

Mr. ADAMS. What book are you reading from?

A. From Exhibit 43.

Q. Will you compare the total vote given for governor with the total vote given for the presidential electors?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial; the comparison will show for itself.

Mr. MAYNARD. You stated this book was not going down there.

Mr. ADAMS. The figures when once in it is a matter that anybody can tell.

Mr. FELLOWS. The objections are made, but not ruled on now.

The WITNESS. I can give you the figures if you will permit all right here.

Q. How many were given for governor?—A. Three hundred and sixty-eight.

Q. How many to the Republican governor?—A. Ninety-seven.

Q. How many were given for the presidential electors?

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial.

A. For the Republican presidential electors, 96 is the largest number.

Q. How many for the Democrat?

Mr. ADAMS. The same objection.

A. The Democrat, the largest number was 57.

Q. The total on Democratic governor is how much?—A. Seventy.

Mr. ADAMS. If this same objection as incompetent, irrelevant, and immaterial to this comparison he is going to make can go all the way through without objecting specifically to every question, I will not make the specific objections.

Mr. MAYNARD. It is still conceded that may be.

WITNESS. The Prohibition electors received 4; the Socialist the largest number of votes for any one of the electors was 108; for its governor 105.

The largest number of votes cast for the Socialist Labor was 18.

Q. I will ask you now whether that record does not show there no splits cast for the Prohibition candidate for governor?—A. No, sir.

Q. And none for the Prohibition candidate for President. He just had 4 straight votes?—A. Had 4 votes.

Q. So where are you reading from there are no splits?—A. This shows that the votes were inserted, these red figures in here; they should not show "Straights" and "Splits." but we wrote the "Straights" and "Splits" in this book; the number of Mussulman's should be written out, the same as there, thirty-one, total, 31. That should have been the way that book was returned to us, the figures written in there and the final figures out in the total column.

Q. That is the statement book you are referring to?—A. Yes, sir.

Mr. FELLOWS:

Q. What I want to get at is what was the total vote for governor after you made the correction; how does that compare with the 375 votes cast as appears by the poll book?—A. After being corrected, it was 358.

Q. And the total number of votes cast, as appears by the poll book, was 375?—A. Yes, sir; for governor, 368; for lieutenant governor, 367; for secretary of state, 367; for State treasurer, 368; for auditor general, 367; for attorney general, 367; for commissioner of the State land office, 367.

Q. Take that last vote you are looking at and see about the split votes and the total.—A. The attorney general—we gave him 113 splits and 254 straights, making a total of 367.

Q. The right-hand column gives the splits?—A. The right-hand column here gives the figures as received by us originally.

Q. That is, the split tickets?—A. Yes, sir.

Q. The next column is the straights?—A. Yes, sir.

Q. And the left-hand column is the total?—A. Yes, sir. Justices of the supreme court, one, 353, and the other, 241; Representative in Congress at large, 348; Representative in Congress, 344; State senator, 346; representative in the State legislature, 347; judge of probate, 278; sheriff, 351; county clerk, 350; county treasurer, 347; register of deeds, 347; prosecuting attorney, 255; circuit court commissioners, 696; coroners, 697; county surveyor, 350; drain commissioner, 348.

Q. When those returns were brought and were delivered to you in the first place, they just contained the right-hand column, which is written in black ink?—A. Yes, sir.

Q. And those were the totals?—A. Yes, sir.

Q. No, take the governor, and state how much was allowed to each officer for each office before they were corrected.—A. Governor, 114; lieutenant governor, 113; secretary of state, 113; State treasurer, 112; auditor general, 113; attorney general, 113; commissioner of the State land office, 113; justices of the supreme court, 111, and the other, 89; Representative in Congress at large, 107; Representative in Congress, 107; State senator, 109; representative in the State legislature, 110; judge of probate, 89; sheriff, 114; county clerk, 113; county treasurer, 110; register of deeds, 110; prosecuting attorney, 103; circuit court commissioners, 222; coroners, 223; county surveyor, 113; drain commissioner, 111.

Q. These totals you have just read were all that were given any of these candidates for any of these offices you have just mentioned by the original returns?—A. Yes, sir.

Q. When this election board came before you, did your board of county canvassers try in any way to dictate or compel the election board to make any particular return on any office?—A. No, sir.

Q. Mr. Schneider, when the attention of your board was first called to this great discrepancy in the votes, was there anything said by anyone respecting the office of Congressman at all?—A. No; I don't think so.

Q. It was simply a discussion as to all of these offices being deprived of some votes that the board thought should be counted for them?—A. Well, the discrepancy was all the way through.

Q. Will you turn to the office of Congressman of this district, to the name of John M. C. Smith, also the name of Claude S. Carney, and see in the right-hand column how many votes were credited to John M. C. Smith as the split votes?—A. Thirty-one.

Q. Will you look at the tally sheet of that precinct, opposite his name in Exhibit 42, and see if there are any tallies opposite his name, and if so, how many tallies?—A. Thirty-one: I think perhaps I had better rectify my answer of a moment ago; of course the board was informed that the office of Congressman was the only office that could not apply for a recount of these ballots, and they were interested in having these returns corrected, so that after the canvassing board had completed its report if any other candidate for State or county questioned the result of the election they could petition for a recount of this particular precinct, but that the office of Congressman was deprived of that right; therefore, unless we could make the correction at that time, they would have to stand as the canvassing board reported.

Q. Your efforts were only to obtain the correct statement of the votes in that precinct?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. The first time the board got together after you got through, you stated the box was sealed and put back into possession of the board?—A. Yes, sir.

Q. As far as you know they took them back to Battle Creek with them?—A. I know nothing to the contrary.

Q. Who was it that informed you that the congressional candidates could not apply for a recount?—A. It was the general talk among the people; I am not sure who.

Q. Did Mr. Carney tell you that when he came here to see you?—A. I will not say whether he did or not; we originally got that impression—well, now, if I were to say who it was I would say Mr. Davis told us that.

Q. At what time?—A. Oh, before we called any of the boards here.

Q. Was he here before you called the board?—A. Yes, sir.

Q. When they came here you directed them to open the ballot box; you say they didn't open any of the ballots, however?—A. They did not.

Q. But you took them out and found certain figures on them?—A. Yes, sir.

Q. And from those figures they corrected their return and put this amended return in red figures here?—A. Yes, sir.

Q. They made a statement at the time to amend the return?—A. Yes, sir.

Q. Is that in that book?—A. These red figures here.

Q. Did they make a statement at the back part of the book?—A. Yes, sir.

Q. Read that into the record.

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial.

A. (Reading:)

“STATE OF MICHIGAN, *County of Calhoun*, ss:

“We do hereby certify that, at the direction of the board of county canvassers, we, the inspectors, do hereby make an amended return, the red-ink figures indicating the changes made to correct the returns.

“In witness whereof we have hereunto set our hands at the city of Marshall, this 13th day of November, 1912.

“W. D. WILSON,

“HARRY CHRISTIAN,

“Inspectors.”

Q. The next day after that Mr. Carney appeared before your board?—A. Yes, sir.

Q. And objected to your means of information that led you to change those figures?—A. Yes, sir.

Q. And on the request of John M. C. Smith, or some one acting in his behalf, then you required the board to come here again?—A. Yes, sir.

Q. Did they then open the box before your board?—A. Yes, sir.

Q. For the purpose of ascertaining if there was anything in that box whereby they could make any different return or correct it in any way?—A. Yes, sir.

Q. And you say that one of the inspectors who was then present found a blotter or piece of paper upon which he claimed to have marked the votes as he tallied them?—A. Yes, sir.

Q. He produced that?—A. Yes, sir.

Mr. ADAMS. I move to strike out what the inspector claimed about the figures on the blotter as incompetent, irrelevant, immaterial, and hearsay.

Q. The box was sealed when it arrived here at that time?—A. Yes, sir; the second time.

Q. They opened the box the same as before?—A. Yes, sir.

Q. Now, from that blotter did they obtain information that led them to make the second certificate in that book?—A. Yes, sir.

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and move to strike it out.

Q. What exhibit is that in?—A. I think that is in the statement you have there—it is in that statement book—in the book that Judge Adams has; the statement is here, the correct figures are in that book.

Q. Read them.

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial.

A. (Reading:)

" STATE OF MICHIGAN, *County of Calhoun, ss:*

"AMENDED CERTIFICATE.

" We, the board of election inspectors of the second precinct, second ward, do hereby certify that, at the request of the board of county canvassers, we do hereby certify that the figures inserted in red ink are the correct figures made by this board of election inspectors, and that the left-hand column of red figures indicate the total vote received by each candidate, in accordance with the corrected returns.

" In witness whereof we have hereunto set our hands at the city of Marshall, the 19th day of November, 1912.

" HARRY CHRISTIAN,

" F. C. CHRISTIAN,

" W. C. WILSON,

" *Inspectors of the Second Precinct, Second Ward.*"

Q. Were the three inspectors here present?—A. Yes, sir.

Q. Which one of the inspectors was it that claimed that he made the figures on the blotter at the time of the election?—A. I couldn't say for that.

Q. Was one of the members that was there a bank officer, a banker, or a clerk in the bank?—A. One was a clerk in the bank.

Q. Do you know which one that was?—A. I think it was one of the Christian boys.

Q. On information have you learned that Fred C. Christian was connected with the bank in Battle Creek?—A. Yes, sir; he told me at that time he was.

Q. Now, was it Fred C. Christian, to the best of your recollection, who claimed he made those figures at the time of the election upon the blotter?—A. That I couldn't answer.

Mr. ADAMS. I object to that as incompetent, irrelevant and hearsay.

Q. When they made this last amended return do you remember that they made any discovery or any difference in their figures from what they did on the second occasion?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial and calling for the conclusion of the witness.

Q. Whether they found out they made a mistake the second time?—A. No, sir; the second time they were called, their figures agreed with those they made the first time.

Q. Is it not true that when they made the second return also that they did not compare until they got through, went right on and made them independently of the first figures they made?—A. Why, I think they did.

Q. And when they got through they agreed with the figures they had made the first time?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and calling for the conclusion of the witness.

A. I think they did.

Q. There was no one made a petition for a recount from that precinct was there, at any time?—A. No, sir.

Q. And the ballots were not recounted at the time?—A. No, sir.

Q. Was there a demand before your board to recount the ballots?—A. No, sir.

Q. Did Mr. Carney at the time he was here ask for a recount of the ballots?—A. No, sir.

Q. To see whether the corrected returns had been made or not?—A. No, sir.

Q. When the board met the second time, was it not made a rule by your board that you would not permit any outsider to say a word or make any argument before the board that influenced this corrected return at all?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. Well, I guess I will say no. I wish to make a little explanation there. When the matter first came up we called in some counsel and the board was satisfied that we did not get as good counsel as we ought to have got, and I think I made the remark when I was a little bit irritated over what was being done and the delays that were made, that when we wanted some advice we would try and find someone that knew more about it than we did.

Q. No argument was made at the last time?—A. No, sir.

Q. Was it not because the board indicated that they did not want to hear from outsiders while this was in progress?—A. Yes, sir; I think I made the remark at the time they came in that we would not expect any interruption from outsiders.

Q. When you made up this final return, what did you make that from, from the amended return given to you by the election board?—A. Yes, sir; the correct returns.

Q. When they corrected those returns, they returned them to you and you made up your canvass from that amended return?—A. Yes, sir.

Q. What time did the board of county canvassers adjourn?—A. On the 21st day of November.

Q. After refreshing your recollection from the last return of this election board, are you able to state that on the right hand side, the figures on each page contain the split votes and the next column to the left the straight votes, and the column to the right the figures contained the total votes given for each office given in Exhibit 43?—A. I am satisfied that is a fact.

Q. The return says the left-hand side figures contain the total?—A. The right hand should contain the total; the statement is that the left-hand side contains the total.

Mr. ADAMS. I object to the statement on the ground that if the certificate is of any value whatever, shows for itself what the different claims are.

Q. Does it not say that the left-hand column figures contains the total vote?—A. Yes, sir; the right in here.

Q. After the last day that the boxes were here before you were the boxes sealed and turned back to the office of the election board of the second precinct of the second ward of Battle Creek?—A. Yes, sir.

Q. And all these ballots were returned with the ballot boxes?—A. Yes, sir.

Q. And it was sealed in your presence?—A. Yes, sir; I think so. I rather think the city clerk sealed it or I did.

Q. Anyway, you saw it done?—A. Yes, sir.

Q. You are a Democrat in politics?—A. Yes, sir; our board of county canvassers consisted of two Republicans and one Democrat.

Q. You were the chairman of the board?—A. Yes, sir.

Q. How was the chairman elected?—A. By the board itself; the board elected its own chairman.

Q. The other two Republicans voted for you to be chairman?—A. Yes, sir.

Q. What do you say the total vote for Levant L. Rogers was, the Socialist candidate for Congress from this district; of this precinct, I mean?—A. The straight vote was 85, and 21 splits.

Q. For Dingley?—A. Forty-eight straights and 32 splits, making a total of 150 in the first case and 80 in the second.

Redirect examination by Mr. ADAMS:

Q. Now, Mr. Schneider, under the head—reading from Exhibit 43—of Representative in Congress there will you start in and read all there is in that paragraph on page 7 of Exhibit 43, just as it appears in that exhibit, showing what is in red figures and what is in black; read it just as it is?—A. (Reading.)

“Whole number of votes given for the office of Representative in Congress was

one hundred and seven. They were given for the following-named persons: Candidates' names. Votes received to be written out in words at length. John M. C. Smith (under the head of candidates' names) under the head of votes received to be written out in words at length the written words are thirty-one, opposite John M. C. Smith's name. The red figures are 97—66. The figure in the final column written in black 'put figures in this column' 31.

"Under the head, 'Candidates' names,' Claude S. Carney. Under the head 'Vote received, to be written out in words at length,' twenty three. The figures in red ink are 61—38, (in black ink) 23.

"Under the head of 'Candidates' names,' Levant L. Rogers. Under the head, 'Votes received,' to be written out in words at length, twenty-one. Red figures, 106—85 (red figures). Black figures, 21.

"Under the head of 'Candidates' names,' Edwin N. Dingley. Under the head of 'Votes received,' to be written out in words at length, thirty-two. Red figures, 80—48 (red figures). Black figures, 32. Red figures, 344, total vote. Black figures, 107."

Q. You said you found some unused ballots in this ballot box in question that were tied up in a bundle?—A. I couldn't answer; I don't know. I have forgotten; I don't think so. I think they were laying on the bottom or top of the ballot box. I think they were the first thing we took off. There were some unused ballots and some instruction ballots in different colors.

Q. I wish you would turn to page 16 of Exhibit "43" now in your hand and read the certificate on that page which is partly printed and partly written in black ink.—A. (Reading)—

"STATE OF MICHIGAN, *County of Calhoun, ss:*

"We do hereby certify that the foregoing is a correct statement of the votes given in the second precinct of the second ward of Battle Creek, County of Calhoun, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the ——— of in said county and State this 5th day of November, A. D. 1912.

"F. C. CHRISTIAN,

"HARRY CHRISTIAN.

"W. D. WILSON,

"*Inspectors of Election.*"

Q. I understood you to say on cross-examination that one of the members of this particular board of inspectors you have been testifying about in this particular precinct claimed that he had made the figures that were on that blotter you found in that ballot box?—A. Yes, sir.

Q. Did he make any such a claim as that before the board?—A. Yes, sir.

Q. That he had made those figures on that blotter?—A. Yes, sir.

Q. That blotter, however, was not signed by the board of inspectors?—A. No, sir.

Q. Nor by any inspector?—A. No, sir.

Q. It did not have the name of any officer of the election board upon it?—A. No, sir.

Q. Your board of county canvassers you stated convened on what date?—

A. The 12th day of November, 1912.

Q. I call your attention to page 132 of the book "Record of Elections, Calhoun County" and ask you whether that is not the page of this record which contained your final canvass of the vote on Representative in Congress, as cast at the election held on Tuesday, the 5th day of November, 1912?—A. Yes, sir.

Q. I ask you to read from this page 132 the certificate that is therein contained.—A. (Reading)—

"STATE OF MICHIGAN, *County of Calhoun, ss:*

"We do hereby certify that the foregoing is a correct statement of the votes given in the several townships and wards of the said county of Calhoun, in said State of Michigan, for Representative in Congress and State senator at the general election held in said county of Calhoun on Tuesday, the 5th day of November, in the year 1912.

"Dated Marshall, the 21st day of November, 1912.

"GEORGE W. SCHNEIDER,

"*Chairman of the Board of County Canvassers.*

"RAY E. HART,

"*Secretary of said Board of County Canvassers.*"

Q. That certificate, so far as the vote on Representative in Congress is concerned, so far as this second precinct in the second ward of Battle Creek is concerned, was made, and your canvass was made upon those returns as they were contained in these red figures that you have referred to—in these exhibits that you have referred to, isn't that so?—A. Yes, sir.

Q. And that certificate and the figures contained in your canvass to which that certificate you just read applies was not made upon the returns of the election board which came into the hands of your board of county canvassers in the first instance?—A. Not as they were originally received; no, sir.

Cross-examination by Mr. MAYNARD:

Q. They were made up from the returns of that board as they amended them?—A. As they were corrected.

Q. They corrected them and amended them and turned them over to you in that condition as they are now shown?—A. Yes, sir.

Q. And you made your canvass from that?—A. Yes, sir.

Q. You are acquainted with Ray E. Hart, formerly county clerk?—A. Yes, sir.

Q. He was not a candidate for reelection for county clerk, was he?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and not the best evidence.

A. No, sir.

Q. Or for any office at this last election?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and not the best evidence.

A. No, sir.

MARCH 8, 1913.

Mr. FELLOWS. We understand that the township of Climax is the only township involved in the Kalamazoo County vote. We understand that the township board of Climax is here, and that the ballot box of the township of Climax is here. I understand that the box is here, and that the township board of the township of Climax is here. Mr. Smith does not desire to have counted for him any ballots that he is not legally entitled to, and does not desire that any votes Mr. Carney is entitled to shall be taken away from him. Inasmuch as the ballot box is here and the board is here, we will consent to the opening of the ballot box and a recount of the votes. This may save considerable time.

Mr. FRANKHAUSER. Let the record show that this board has been subpoenaed by the contestant and the box brought in by the witnesses.

Mr. ADAMS. It is stipulated that by the consent of both parties to this controversy that the board, having the ballot box here before the commissioner, may open the same, and that the votes therein contained may be counted and what the ballots show may be placed upon the record for the consideration of Congress or the Committee on Elections in this controversy. Upon this particular office the question is to be made and the vote counted in so far only as the ballots relate to the office of Representative in Congress.

Mr. FRANKHAUSER. I think that is all right.

(Whereupon A. L. Curtis, George Eberstein, Judson Pierce, and Hubert Elwell, members of the Climax election board, after being duly sworn to make a true and correct recount of the ballots, opened the ballot box and proceeded to make a recount of the same.)

HUBERT ELWELL, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. You live in Climax, Kalamazoo County?—A. Yes, sir.

Q. You are supervisor of Climax township in this county of Kalamazoo?—A. Yes, sir.

Q. Were you such supervisor from the April, 1912, election, and are now and were at that time when the November 5, 1912, general election was held in Kalamazoo County, in the township of Climax?—A. Yes, sir.

Q. Were you one of the board of election inspectors at that general election held in the township of Climax, this county?—A. I was.

Q. And acted as such on that board?—A. Yes, sir.

Q. Are you the Elwell who signed the election returns of the vote of that township of Climax?—A. Yes, sir.

Q. For the general election held there November 5 last?—A. Yes, sir.

Q. This Exhibit 48, presumably the ballot box, before you—state whether or not that is or is not the ballot box in which the ballots were deposited at the time and during the election that was held in the township of Climax, on November 5, 1912.—A. It is one of the ballot boxes used at that time, but not for the general election. We had to use a larger box, and got a sugar barrel. We headed it up and nailed it and cut a slot in it.

Q. Did this Exhibit 48 contain the votes for Representative in Congress that were cast at the November 5, 1912, election in the township of Climax, Kalamazoo County?—A. I think so.

Mr. ADAMS. Will you concede that Exhibit 49 is one of the statement books of the election held in this particular precinct on the 5th day of November, 1912, which has been produced by the county clerk?

Mr. FELLOWS. Yes.

Mr. ADAMS. I offer in evidence Exhibit 49, which is a statement of the vote of the general election held on Tuesday, the 5th day of November, 1912, in the township of Climax, Kalamazoo County, Mich.

Mr. MAYNARD. Under the stipulation we just made that the board count the vote in the box, and that that should be placed on the record is evidence of what the vote is.

Mr. ADAMS. This is for the purpose of showing what it was. We have to show the return to make the record; that is the only object we offer it for—to show there was a mistake there.

Mr. FRANKHAUSER. Why can't we say the board returned so many for Mr. Carney and so many for Mr. Smith and shorten the record up?

Mr. ADAMS. All right.

Q. Now, this book, Exhibit 49, shows how many votes your board returned as having been determined by your board in counting the ballots for John M. C. Smith, Representative in Congress. How many votes does it show there?—A. Eighty-three.

Q. How many votes does it show for Claude S. Carney for the office of Representative in Congress, as returned by your election board?—A. Eighty-two.

Q. How many does it show to have been returned by your board of inspectors for Levant L. Rogers for the office of Representative in Congress?—A. Forty.

Q. How many votes does Exhibit 49 show as having been returned by your board of inspectors for Edwin N. Dingley for the office of Representative in Congress?—A. Fifty-four.

Q. Mr. Elwell, have you and have the board of inspectors for Climax Township, Kalamazoo County, Mich., counted the ballots in the ballot box, Exhibit 48, here this morning before the commissioner taking the testimony in this contest?—A. We have; yes, sir.

Q. I wish you would state what the number of the ballots were that your board found here on this recount this morning for John M. C. Smith for Representative in Congress, as shown by that recount of the township of Climax, Kalamazoo County, Mich., made this morning.—A. Ninety.

Q. I wish you would state what you found the vote for Claude S. Carney for Representative in Congress, as made here from the ballots in this ballot box, Exhibit 48, this morning.—A. One hundred.

Q. Now, Mr. Elwell, can you explain how the inconsistency arose, if you know, in the vote, as made by you for the candidates for Congress, and the count you have made here this morning after opening this ballot box, and the count as returned for John M. C. Smith and for Claude S. Carney for Representative in Congress, as contained in Exhibit 49, the return of your board from Climax Township of the votes cast on the day of the election, November 5, 1912?—A. The only way I can explain it is that there was evidently a roll of ballots that was not counted. That is, we went on and counted the votes, and there were 318 in the box. It was laid off in several packages, straight votes and split votes, the straight votes for each party, and I think when we came to count up the vote and make up the tally sheets that we overlooked one of those packages.

Cross-examination by Mr. FELLOWS:

Q. The election which was held in Michigan on November 5, as far as pertains to the township of Climax at least, was an election in which you had more split votes than ordinarily?—A. Yes, sir.

Q. And it was a very bad election to canvass on that account?—A. Yes, sir.
Q. More split votes than you have ever had?—A. I think so.

Redirect examination by Mr. ADAMS:

Q. You mean in the township of Climax?—A. Yes, sir.
Q. I suppose that is all you know about it?—A. Yes, sir.
Q. You only know that there were more split votes in this last election in the township of Climax?

Recross examination by Mr. FELLOWS:

Q. Did you at any time make any offer to recount these votes for Mr. Carney, did he ask you to?—A. No, sir.

Mr. FRANKHAUSER. We will concede that the board of county canvassers used the same figures, put down the same figures in their canvass that was sent to them by the election board of Climax Township.

Mr. ADAMS. Will you concede that the board of county canvassers gave John M. C. Smith 83 votes and Claude S. Carney 82 votes in their final canvass of the vote in the township of Climax of the November 5, 1912. election for Representative in Congress?

Mr. FELLOWS. Yes.

MARCH 10, 1913.

WILLIS H. TOWER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant, Claude S. Carney, as follows:

Direct examination by Mr. ADAMS:

Q. Where do you reside?—A. I reside in Union City.
Q. How long have you lived there?—A. All my lifetime.
Q. What is your age?—A. I am 55.
Q. Were you in any way officially connected with the general election that was held in the township of Union, in the county of Branch, Mich.—the general election—on the 5th day of November, 1912?—A. Yes, sir.
Q. In what capacity?—A. I was one of the inspectors, chairman of the board.
Q. Union City is in the township of Union, is it not?—A. Yes, sir.
Q. Is there more than one precinct, or was there on November 5, in the township of Union, Branch County?—A. No, sir; just one.
Q. One voting place in the township of Union, Branch County, Mich., at that election was where?—A. It was held in the opera house in Union City.
Q. I show you Exhibit No. 50, poll book of the general election held November 5, 1912, in the township of Union, county of Branch, State of Michigan. On page 16 of this exhibit, Mr. Tower, I notice some names there opposite the printed words "inspectors of the general election held Tuesday, the 5th day of November, 1912"; will you read those names that appear there on that page of that exhibit to that certificate?—A. W. H. Tower, Byron W. Bray, Ellsworth P. Wooster, W. F. McClymont, and I. J. Margeson.
Q. Did you take an oath that day, before the election board of that precinct began its duties?—A. Yes, sir.
Q. That you would discharge the duties of the office of inspector of that election and support the Constitution of the United States and the constitution of the State of Michigan?—A. Yes, sir; I did.
Q. Mr. McClymont acted as clerk of that election?—A. Yes, sir.
Q. And Mr. Margeson acted as clerk of that election?—A. Yes, sir.
Q. That election in that precinct on that day was opened and commenced about what time during the day?—A. About 7 o'clock; it might have been 5 or 10 minutes after and might not have been; about 7, just about 7 o'clock we took our seats and got ready for work.
Q. In the morning?—A. Yes, sir.
Q. The voting was stopped and closed, as far as any voting was concerned there that day by your board, at what hour?—A. Twelve o'clock at noon.
Q. Then what did you and your board do?—A. Well, we sealed the ballot boxes. I don't know whether we locked them up and left a man with them.
Q. Where did you put the box, the statement book, the poll book, and the tally-sheet book?—A. The statement book and the tally sheet were not used at that time. We didn't use those until afterwards until we commenced to count. The poll book—I think the clerk took that with him.

Q. You didn't put it in the ballot box?—A. No, sir; we didn't open up the ballot box.

Q. You said you sealed the ballot box at noon?—A. Yes, sir.

Q. Was it not already sealed?—A. We sealed it over the place where we had been putting in the ballots.

Q. The slot?—A. Yes, sir.

Q. Was it locked?—A. Yes, sir.

Q. Had you had it locked all that morning up to the time you took your adjournment at noon?—A. Yes, sir.

Q. Who went away from there at noon?—A. I think they all went away from there—all went to dinner.

Q. Who had the key to the ballot box, if you know?—A. We had two ballot boxes.

Q. I mean the ballot box in which the vote for Representative in Congress was.—A. They were all on the same string. I think the clerk had them.

Q. What is his name?—A. Mr. McClymont; I am not sure about that, though. It was locked up in the morning when we started.

Q. You went to lunch?—A. Yes, sir.

Q. How long were you gone?—A. We adjourned until 1 o'clock.

Q. Did you make any announcement of the adjournment?—A. Yes, sir.

Q. Who made that announcement?—A. I made it.

Q. What did you announce?—A. I think that I said, "The polls of this election are now adjourned until 1 o'clock." I think that is it. I am not sure exactly about that, but that is the substance of what I said.

Q. Did you come back at 1 o'clock?—A. Just before 1 o'clock.

Q. Then what did you do?—A. Well, when we were all there we declared the election open and took the seal off the slot where we put in the ballots and went on with our election.

Q. What time did you begin your election in the afternoon?—A. About 1 o'clock, I should say; I think just exactly 1 o'clock.

Q. Where did you get your poll book from when you commenced again at 1 o'clock?—A. From the clerk. He took them to his office, and he brought them over there, or they were left there; I am not sure about that. I didn't have charge of them; those two clerks had, Mr. McClymont and Mr. Margeson.

Q. Did the clerks go with you to the same place where you got your lunch?—A. No, sir; I went to my own home, and I think they all did the same.

Q. Did you see this poll book brought back to the voting place at 1 o'clock or about that time when you came back at one?—A. I know they had them there. I didn't see them brought back.

Q. Were the books there when you got back to the voting place?—A. Well, I think they were; I think that the books were left there, but I am not sure; I can't tell about that; I don't recollect.

Q. If they were left there, do you know where they were left?—A. They were locked up in the opera house; the opera house was locked and one of our men had the key to it.

Q. You saw it locked up at noon?—A. Yes, sir.

Q. When you came back at 1 o'clock did you open up the election?—A. Yes, sir.

Q. Did you make any declaration?—A. Yes, sir.

Q. What did you declare?—A. "Hear ye, hear ye, the polls of this election are now open."

Q. Then went on with the election?—A. Yes, sir.

Q. Until when; when did you stop voting?—A. When did we close?

Q. At 5 o'clock.—A. Five or six o'clock; just what the law says; I couldn't say whether 5 or 6; we adjourned just as soon as the law said we should close we closed.

Q. When you closed the polls that day did you make any declaration?—A. Yes, sir.

Q. Of the closing of the polls?—A. Yes, sir.

Q. Did you do that?—A. Yes, sir.

Q. After you closed the polls what did you do?—A. Well, the first thing we did we got our lunch.

Q. Did you take any adjournment?—A. No, sir.

Q. Where did you get your lunch?—A. At a restaurant; they were going to bring it over, but they didn't get there, and we went after it.

Q. Did you have the ballots out of the ballot box then?—A. No, sir.

Q. After you closed the votes at 5 o'clock, did you, before you went to get your lunch, open the ballot box?—A. No, sir.

Q. What was done with the ballot box at the time you went to your evening lunch?—A. They were left there in charge of the gatekeeper.

Q. How many gatekeepers did you leave there?—A. One.

Q. Who was that?—A. His name was Herbert Phillips.

Q. Did you seal the ballot box when you went to your evening lunch?—A. I am not sure about that, I think not; I am not sure, but I think not.

Q. Did you all go out except the gatekeeper to lunch?—A. Yes, sir.

Q. About 5 o'clock or a little after?—A. Just soon after we closed; it was ordered to be brought there, but they didn't get it, and we were anxious to get to work, and we went after it.

Q. Did you make any declaration when you took that adjournment, after you stopped voting there?—A. When we went to supper?

Q. Yea.—A. No, sir.

Q. You just stopped without making any public announcement?—A. Yes, sir; I says, "We will get our lunch before we commence counting the ballots."

Q. You then went out and got your lunch?—A. Yes, sir.

Q. And came back about what time?—A. We might have been gone 20 or 30 minutes.

Q. When you got back who was there?—A. The same Mr. Phillips, the gatekeeper.

Q. He was the only one there when you got back?—A. Yes, sir.

Q. What time in the day did you get back?—A. I should say about 20 minutes after 5, or half past 5; I think we waited a little for them to come, but they didn't come.

Q. You mean you waited for your lunch?—A. Yes, sir; they were going to bring it up, but didn't do it.

Q. When you got back there, after going out to get your lunch and after the voting had stopped, you think it was about half past 5?—A. Yes, sir.

Q. Then what was done?—A. Then we opened the ballot box and turned the ballots on the table, but we opened the main ballot box; we had the presidential electors in a large box.

Q. That ballot box also contained the votes for the different candidates for the office of Representative in Congress?—A. Yes, sir; they were all on one ballot, I think.

Q. Did you or not commence counting those returns?—A. We counted them; yes, sir.

Q. What time did you conclude the count?—A. About 4 o'clock in the morning.

Q. The next morning?—A. Yes, sir.

Q. The morning of the 6th?—A. Yes, sir.

Q. After you got through counting, what did your board do?—A. After we got through counting, I declared the election and read off the statement book, and we sealed the ballot box, put the ballots in with one tally sheet.

Q. With one tally sheet in the box?—A. Yes, sir; and sealed them up.

Q. In the box in which the ballots for Representative in Congress were?—A. Yes, sir.

Q. Was that the only book you put in the ballot box?—A. Yes, sir.

Q. What else did you do then, before you left?—A. We sealed up the ballot box, put that tally sheet in, and closed up the polls and took our books and took the ballot boxes, two of them, with the books, to the clerk's office.

Q. The city clerk?—A. The township clerk.

Q. What did you do with the books that you didn't put in the ballot box?—A. The clerk took them.

Q. The township clerk?—A. Yes, sir; Mr. McClymont.

Q. He was the township clerk?—A. Yes, sir.

Q. He had the books that were not in the ballot box?—A. Yes, sir.

Q. Do you know where he took them to?—A. He took them to his office.

Q. Did you go up to his office with him?—A. No, sir.

Q. Where did you last see the clerk with those books?—A. When we went out of the opera house I left—I had to go that way to get home; I had to go around this way, and as long as two or three other fellows were going with him, they all went that way to his office.

Q. The last you saw of the books they were in the possession of the township clerk going a different direction from the way you were?—A. Yes, sir.

Q. Had you completed the election returns—did you take an adjournment there about 4 o'clock in the morning when you quit?—A. No, sir; we considered we were through then.

Q. Did you make any adjournment of your board there when you quit in the morning?—A. No, sir.

Q. Did any of you get together the next day—any members of your board?—A. Mr. McClymont and myself, at his office.

Q. What time?—A. About between 9 and 10 o'clock.

Q. That was the morning of the 6th of November, 1912?—A. Yes, sir.

Q. You went to Mr. McClymont's office on the morning of the 6th of November, 1912?—A. Yes, sir.

Q. What, if anything, did you and Mr. McClymont do on the morning of the 6th of November, 1912, with reference to any of these election returns from that township?—A. In the statement book, where it says the number of votes a person has, we put it in in numbers—in figures, I mean—and it says it shall be written in, and we wrote those in.

Q. Why didn't you write those in the night before?—A. We didn't know at that time that it was the law; we had always done that way before that; we have always done that way for years, and we didn't know but what that was the right thing to do.

Q. You didn't know but what it was the right thing to write it in there?—A. When we adjourned we knew it was right for us to write those in, but we didn't think it was necessary they should be written in that night. It was 4 o'clock, and it was agreed among our board that we should write them in the next morning.

Q. You didn't write them in when you adjourned at 4 o'clock on the morning of the 6th of November, 1912?—A. Yes, sir; those figures were all put in there and footed like they are now; then we wrote this "225" in.

Q. Then, under the number of votes given for the office of Representative in Congress, on page 7 of Exhibit 51, opposite the name of John M. C. Smith, you wrote in there on the morning of the 6th of November, 1912, for the first time, the words "two hundred and seven"?—A. Yes, sir; this was put in the night before.

Q. That is, you mean the figures "207," opposite the name of John M. C. Smith, were put in there the night before?—A. Yes, sir; then we adjourned.

Q. Opposite the name of Claude S. Carney, for the first time, you wrote in one hundred and fifty on the morning of the 6th of November, 1912, in writing?—A. Yes, sir.

Q. Opposite the name of Claude S. Carney, before you adjourned the night of election, did you write in "150"?—A. Yes, sir; that was written before we adjourned.

Q. On the night you adjourned?—A. It was in the morning.

Q. The morning of the 6th?—A. Yes, sir.

Q. About 4 o'clock?—A. Yes, sir.

Q. You were one of the two members of the board—you and Mr. McClymont—who completed that statement book on the morning of the 6th of November, 1912, by writing in the words as you have indicated?—A. Yes, sir.

Q. The other members of the board were not present at that time?—A. No, sir.

Q. When you got that written in what was done with the election returns of that election?—A. Mr. McClymont took one of the statement books and one of the poll books and sent them in one envelope. We put one statement book in another envelope, and they both came here, one to the judge of probate and the other, I think—I don't know who the other came to—whether to the county canvassers or the county clerk; I guess they were sent over here.

Q. Did you see them put in the post office?—A. I saw them put in the envelopes and sealed, and Mr. McClymont took them to the post office.

Q. Did you see him take them to the post office?—A. I saw him go out of the office with them in his hand.

Q. You didn't go along with him to the post office?—A. No, sir; but it is recorded in the post office.

Mr. ADAMS. That part I object to, and move to strike out the answer that it is recorded in the post office; there is better evidence of that.

Q. Was it on the morning of the 6th of November that you saw these election returns sealed up in the envelopes in the office of Mr. McClymont?—A. Yes, sir.

Q. You are sure about the date?—A. Yes, sir.

Q. Of your own knowledge, I mean?—A. Yes, sir; I was right there myself and saw it done.

Q. What seal did you have that election day while the board was in session?—A. The regular seal of the township of Union. I think it says something about the township of Union; I couldn't tell you what is on it, but it has the township of Union on.

Q. The seal that Mr. McClymont put on that envelope that day which you have stated was not the same seal that you had used that election day there by the board of inspectors at that election, was it?—A. I am not sure about that.

Q. The seal that was put on those envelopes in Mr. McClymont's office was a seal that Mr. McClymont produced, was it not?—A. I think they are all the same thing.

Q. The point is, the seal that Mr. McClymont used that day, the 6th of November, 1912, when you say you saw these envelopes sealed up in Mr. McClymont's office, was a seal that Mr. McClymont produced there and used in sealing those envelopes, was it not?—A. Yes, sir; it was the township seal, I think.

Q. It was a seal he produced—that Mr. McClymont produced?—A. Yes, sir.

Q. You don't know where he got it?—A. He had it in his office.

Q. That was not the same seal you used election day in connection with the election business?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. I say that he had these seals and wax all in one box that was there; they might be both the same seal; I think so, but I will not swear to it.

Q. Didn't the justice of the peace take the seal away when you left your voting place that morning of the 6th?—A. I am not sure; I don't know; I don't know; I am sure I don't know about that, although I can tell you what I think. I think Mr. McClymont had two or three seals in a box about alike.

Q. Isn't it your recollection now that when you broke up there on the morning of the 6th that the justice of the peace took the seal that you had used there by your board of inspectors on that day for election purposes?—A. I am not sure; I don't know; I didn't see him take it.

Q. You don't know whether the seal you used in McClymont's office on the morning of the 6th, after you went back there to finish up the returns, was a seal that Mr. McClymont produced there in his own office? He was township clerk?—A. He was township clerk.

Q. He was not a justice of the peace at the time that election was held?—A. No, sir.

Q. He was one of the men who acted as one of the clerks of that election?—A. Yes, sir.

Q. When you broke up there about 4 o'clock in the morning, after you say you got through with that election, in making out your returns, as far as you made them out up to that time, were all delivered over to the township clerk?—A. Yes, sir.

Q. Except the one book that you say was in the ballot box?—A. Yes, sir.

Q. They were not under seal?—A. I will not say that.

Q. They were not in any way sealed up?—A. No, sir.

Q. They were open so anybody could open them up?—A. Mr. McClymont had them in his charge.

Q. He had them in his charge, but there was no seal on those books?—A. No, sir.

Q. They were open just the same as now, without any seal on them?—A. Yes, sir.

Q. As they lay here before you?—A. Yes, sir.

Q. He could open them up if he saw fit to do so?—A. Yes, sir.

Q. Without breaking any seal?—A. Yes, sir.

Q. Your board of inspectors of that election did not deliver at any time the election books to Mr. McClymont, the township clerk, in a sealed condition?—A. No, sir.

Q. All of these election books that you used there on that day for election purposes, except the one that was put in the ballot box, were not in any way sealed by the board when it disbanded?—A. No, sir.

Q. Or at any time that you know of?—A. They were sealed when we sent them away; that is all.

Q. That was the first time you knew of their being sealed?—A. Yes, sir.

Q. They were not sealed by the board of election inspectors at any time before they were delivered to the township clerk?—A. No, sir.

Q. After you got through there the morning of the 6th?—A. No, sir; he took charge of them; we understood it between ourselves that we were going to

write that in, and he took them and took them to his office and locked them up.

Q. The board didn't seal them at all at any time?—A. No, sir.

Q. The first seal you saw upon any of those books, except the one that was put in the ballot box—A. (Interrupting.) The tally sheet.

Q. (Continuing.) Was when you saw Mr. McClymont seal them in his office on the morning of the 6th?—A. Yes, sir.

Q. Did Mr. McClymont retain the seal he sealed those envelopes with?—A. I think so.

Q. You didn't take it?—A. No, sir.

Q. You didn't see anybody else take it from Mr. McClymont?—A. No, sir.

Cross-examination by Mr. FRANKHAUSER:

Q. Mr. Tower, where is that election box that contained the votes for Representative in Congress?—A. In the clerk's office.

Q. Has it been there ever since, as far as you know?—A. Yes, sir.

Q. Has it been opened since?—A. No, sir; not to my knowledge.

Q. Does it contain the ballots of the general election held November 5, 1912?—A. Yes, sir.

Mr. FRANKHAUSER. In response to any claim that may be made here by the contestant that the returns filed with the county clerk and the probate court do not contain an honest or correct statement of the result of that election for Member of Congress for the third district, in Union township, the contestee now consents that the box may be produced and the votes counted under the direction of the commissioner here, Mr. Stockwell, and whatever result is thereby found to exist will be the result of this contest in that precinct, in the same manner that the votes were counted in the township of Climax, Kalamazoo County, Mich., March 8, 1913.

Q. As I understood you, Mr. Tower, the names you first read here from Exhibit 50, being the poll book of that township, of those five men, three of them were inspectors and two were clerks?—A. Yes, sir.

Q. Who were the inspectors there?—A. Myself, Mr. Bray, and Mr. Wooster.

Q. Mr. McClymont was township clerk?—A. Yes, sir.

Q. According to law he would also be an inspector, wouldn't he?

Mr. ADAMS. Objected to as incompetent.

A. Mr. McClymont and Mr. Margeson were clerks and set down the names on the books.

Q. What township office does Mr. McClymont hold?—A. Township clerk.

Q. Now, when you got through with the vote there that day at about 5 o'clock—you say that was the law—A. Yes, sir we closed on time.

Q. As I understand it, you expected that your lunch would be brought there, but they failed to bring it?—A. Yes, sir.

Q. And after waiting some time you thought you would get it yourselves—A. Yes, sir.

Q. While you were gone the ballot box was in the possession of who?—A. Herbert Phillips.

Q. And the ballot box was locked as it had been all day?—A. Yes, sir.

Q. Was he there when you returned from your lunch?—A. Yes, sir.

Q. How long were you gone?—A. We may have been gone twenty or thirty minutes; not longer than that.

Q. When you returned did you continue the count until it was completed?—A. Yes, sir.

Q. After you began, you continued the count until completed?—A. Yes, sir.

Q. You didn't begin the count before you went to lunch?—A. No, sir.

Q. Nor open the box or anything of the kind?—A. No, sir.

Q. When you returned was there anybody else in the voting room beside Mr. Phillips?—A. I think not.

Q. Now, when you got through counting, it was pretty late in the night, or early in the morning?—A. Yes, sir.

Q. About what time?—A. About 4 o'clock, I should say.

Q. Just tell, to put it on the record, how complete your work was before you went away that morning?—A. The statement books were all completed except writing in the numbers. Everything else was done that we knew should be done.

Q. That is, writing in the words?—A. In writing in the number of votes.

Q. You wrote afterwards the number of votes?—Yes, sir.

Q. I will show you Exhibit 50. Had you signed the poll book there at the voting place?—A. Yes, sir.

Q. Everything was signed up before you left?—A. Everything was done; yes, sir.

Q. As I understand you, there was an agreement among the members of the board that you and the clerk should write in those words where the law required them to be written in?—A. Yes, sir.

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and hearsay and move to strike out the answer.

Q. I show you Exhibit 51. Turn to page 16 under certificate. Was that certificate signed before you quit the polling place that morning?—A. Yes, sir.

Q. Read that down to and including those names.—A. (Reading:)

"STATE OF MICHIGAN, *County of Branch, ss:*

"We do hereby certify that the foregoing is a correct statement of the votes given in the township of Union, county of Branch, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the village of Union City, in said county and State, this 5th day of November, 1912.

"W. H. TOWER,

"E. C. WOOSTER,

"BYRON W. BRAY,

"W. F. MCCLYMONT,

"I. J. MARGESON."

Q. You have been reading from the statement book of the general election, page 16, of Exhibit 51?—A. Yes, sir.

Q. Was that completed before you left the polling place that morning of the 6th of November, before you went to the clerk's office?—A. Do you mean was that signed?

Q. Yes, sir.—A. Yes, sir.

Q. I call your attention to Exhibit 50, being the poll book referred to here with the certificate of the inspectors at page 16:

"STATE OF MICHIGAN, *County of Branch, ss:*

"We do hereby certify that the foregoing poll list has been carefully compared by us with the duplicate poll list as required by law, and that all mistakes found in said poll lists have been duly corrected by us, and that both of said poll lists are now correct and agree with each other.

"In witness whereof we have hereunto set our hands at Union City, in said county and State, this 5th day of November, A. D. 1912.

"W. H. TOWER,

"BYRON W. BRAY,

"E. C. WOOSTER,

"W. F. MCCLYMONT,

"I. J. MARGESON,

"*Inspectors of the general election
held on the 5th day of November, 1912.*"

When was that signed?—A. After we quit in the morning.

Q. At 4 o'clock?—A. Yes, sir; or about that time.

Q. Before you left the polling place?—A. Yes, sir.

(Tally sheet book of Union Township of the general election held on the 5th day of November, 1912, Branch County, Mich., was marked "Contestee's Exhibit 52.")

Q. I think maybe I asked you this once before: Just what was understood between you and the rest of the board as to what should be done in this statement book before it was mailed to the county officers?

Mr. ADAMS. We object to that as incompetent, irrelevant, immaterial, and hearsay.

A. It was understood between the board that Mr. McClymont and myself should write in the figures the next morning and mail them.

Q. Then, as I understand, you had completed the count, announced the result, and signed the books—that is, the poll book and the statement book—before you left the voting place—A. Yes, sir.

Q. Then the board went to their several homes to breakfast?—A. We went home and went to bed instead of breakfast.

Q. Then you went to the township clerk's office at about 9 o'clock to write in those words?—A. Yes, sir.

Q. Where did you find the statement book and the poll book?—A. The clerk had them on his desk.

Q. Was there anything done with either one of them, except to write in the words you have spoken of?—A. Nothing at all.

Q. Was there any dating done?—A. No, sir.

Q. Everything was dated, finished, signed, and completed except the writing in of those words?—A. That is all we did.

Q. Now, I will ask you to refresh your recollection from Exhibit 51, the statement book, and state how many votes the Republican electors got for President?—A. Twenty-six hundred and seventy-five.

Q. I mean each one. How many the Republican electors got for President?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. The highest was 181 and the lowest was 178.

Q. What did you write in there after you got to the township clerk's office with regard to that? You wrote in the words opposite the figures you had already written in?—A. Yes, sir.

Q. Whose figures are these?—A. They are mine [referring to the figures for the Republican electors].

Q. Who wrote the writing to the left of the figures?—A. I did.

Q. Referring to Exhibit 51, how many votes did the Democratic electors get?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

Q. The highest to the lowest?

Mr. ADAMS. The same objection.

A. One hundred and forty-two right straight through.

Q. Did you, before leaving the polling place, put in the figures?—A. Yes, sir.

Q. Then what did you add afterwards, when you were at the township clerk's office?—A. Just the words.

Q. Then you wrote in the words "one hundred and forty-two" how many times?—A. As many times as there were Democratic electors.

Q. Page 2 of Exhibit 51, how many votes did the Prohibition electors get?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Thirteen and 12; 13 the highest and 12 the lowest.

Q. Were the figures placed there before you gentlemen left the polling place?—A. Yes, sir.

Q. What was it you added in there at the township clerk's office?—A. We wrote the figures out in words.

Q. That is, 13 and 12?—A. Yes, sir.

Q. Come on down to the Socialist Party. How many votes did the Socialist electors get?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Four.

Q. When did you put the figures down there showing that vote?—A. Right there.

Q. Before you left the polling place?—A. Yes, sir.

Q. When did you put the words in?—A. The next morning.

Q. Turn to page 3 of the same exhibit. How many votes did the Socialist Labor Party get?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. One.

Q. What did you do there, with reference to those words and figures?—A. We wrote the figures in before we closed, and the words the next morning.

Q. At the clerk's office?—A. Yes, sir.

Q. On the same page, I ask you how many votes did the Progressive Party get, from the highest to the lowest?—A. Two hundred and twenty-two and 221.

Q. When were the figures put down there?—A. Before we closed.

Q. And the words?—A. The next morning.

Q. Who put those words and figures down?—A. I did, myself.

Q. Did you do all the clerical work in reference to making these books?—A. One of our clerks got so nervous that he could not do anything, and finally he handed the book to me and let me write it in for him. He was not very well, and he asked me to do it for him; Mr. Margeson did.

Q. I will ask you to read into the record, page 4, from the same exhibit, the number of votes each man received for governor in Union Township.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. Amos S. Mussulman, 164; Woodbridge N. Ferris, 206; J. B. Leland, 9; Hagerhymer, 3; Watkins, 177.

Q. Which one was the Republican?—A. Mussulman.

Q. Who was the Democratic candidate?—A. Woodbridge N. Ferris.

Q. Who was the National Progressive candidate?—A. Watkins.

Q. Now, were those figures put in there before you left the polling place?—A. Yes, sir.

Q. And the words were put in afterwards, about 9 o'clock, as you have testified?—A. Yes, sir.

Q. Now come down to the votes for lieutenant governor, and read those.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

Q. Were all the figures in this exhibit put down by you before you left the polling place as a board, and the words afterwards put in at the township clerk's office, according to the agreement you have testified to?—A. I see they have in here 155; I don't think that is my writing.

Q. That is, these totals?—A. Yes, sir. This is my writing here.

Q. But the other figures are your handwriting?—A. Yes, sir; this is my writing in here.

Q. The figures that you refer to that were not yours are the totals in each office?—A. Yes, sir.

Q. Begin with lieutenant governor.

Mr. ADAMS. I object to his reading what the lieutenant governor got as irrelevant and immaterial.

A. (Reading.) "John Q. Ross, 182; James W. Helme, 161; F. C. Demorest, 9; Edwin R. Cornish, 4; William D. Gordon, 199."

Q. As you understand, Mr. Gordon was the National Progressive?—A. Yes, sir.

Q. Take the office of secretary of State.—A. (Reading.) "Fred C. Martindale, 191; James B. Balch, 151; Alfred Lowther, 10; Henry Kummerfeld, jr., 3; Thos. H. Grabouski, 1; Howard L. Battdorff, 201."

Mr. ADAMS. I move to strike that out as irregular and immaterial; I move to strike out the last he read of the different candidates for the office of secretary of state as irrelevant and immaterial.

Q. The last one you read, Mr. Battdorff, was the National Progressive?—A. Yes, sir.

Q. And Mr. Balch was the Democrat?—A. Yes, sir.

Q. Take next the office of State treasurer.

Mr. ADAMS. I object to that as incompetent and immaterial.

Mr. FRANKHAUSER. You can have an objection and an exception to all of this as irrelevant and immaterial. Is it conceded that the second name is the Democrat always?

Mr. ADAMS. I think so.

A. (Reading.) "John W. Haarer, Republican, 191; John H. Robson, 150; John Borland, sr., 10; John H. Beyer, 4; Arthur L. Kline, 2; Frank C. Holmes, Progressive, 201."

Q. The next one is auditor general.—A. (Reading.) "Oramel B. Fuller, Republican, 192; Peter Primeau, Democrat, 149; William J. Reynolds, 10; Ralph Kirsch, 4; Fred Hueffner, 2; Herbert F. Baker, 201. Attorney General: Grant Fellows, Republican, 191; Louis E. Howlett, Democrat, 151; Seth B. Terry, 1; Homer C. Van Aiken, 4; George Hasseler, 2; Julius C. Kirby, 201. Commissioner of the State land office: Augustus C. Carton, Republican, 190; Orlando F. Barnes, Democrat, 149; Willis M. Farr 10; Chris. Niva, 4; Isaac J. LeBrun, 1; Oscar E. Linden, 203. Justices of the Supreme Court, short term: Joseph H. Steere, Republican, 192; Rollin H. Person, Democrat, 150; Winent H. D. Fox, 10; Garry Dohm, 4; Willard J. Turner, 201. Justices of the Supreme Court, long term: Franz C. Kuhn, Republican, 179; George L. Yapple, Democrat, 165; Edwin H. Lyon, 199."

Q. Mr. Kuhn was Republican, and Mr. Yapple the Democrat?—A. Yes, sir. "Representative in Congress at large: Patrick H. Kelly, Republican, 193; Edward Frensdorf, Democrat, 148; Fred W. Corbett, 10; Milan F. Martin, 4; William H. Hill, 200. Representative in Congress, third District: John M. C. Smith, 207; Claude S. Carney, 150; Levant L. Rogers, 4; Edwin N. Dingley, 188."

Q. I will ask you now, was that true with reference to all the figures representing the votes they received, that they were placed there by you before you left the polling place, and the words written in at the office of the township clerk?—A. Yes, sir.

Q. Do those figures correctly represent the number of votes each one received?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. They are as far as the tally sheet showed.

Q. Now take the office of State senator. A. (reading:) "Swift, 237; Corliss, 140; Cameron, 3; Howard, 171."

Q. You understand that Mr. Swift was the Republican and Mr. Corliss the Democrat?—A. Yes, sir. "Representative for the State legislature: Evans, 214; Sherman, 148; Donnigan, 190."

Q. You understand the first one was a Republican?—A. Yes, sir.

Q. And Sherman a Democrat?—A. Yes, sir.

Q. And Donnigan a Progressive?—A. Yes, sir. "Judge of probate: Republican candidate, 253; Democrat candidate, 140; Progressive candidate, 156. Sheriff: Republican candidate, 235; Democratic candidate, 133; Progressive candidate, 140. County treasurer: Republican candidate, 237; Democratic candidate, 144; Progressive candidate, 170. Register of deeds: Republican candidate, 236; Democratic candidate, 134; Progressive candidate, 166. Prosecuting attorney: Republican candidate, 215; Democratic candidate, 195; Progressive candidate, 142."

Q. Take the vote for Representative in Congress which you gave, John M. C. Smith 207, and Claude S. Carney 150, state whether those are the numbers that appeared there that day?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not the best evidence, and that the returns must speak for themselves.—A. Yes, sir.

Q. Have there been any changes or alterations made in regard to it?—A. No, sir.

Q. Were those the number of votes that each one actually received?—A. Yes, sir; as far as the tally sheet shows.

Q. I will ask you again whether there have been any changes or alterations of any kind in those figures?—A. Not that I could see.

Q. If there was, you could see?—A. Yes, sir.

Q. Now I will ask you, as far as you know, whether that election, and canvass of the votes returned, were in every way honest and square, as far as you know?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. Yes, sir.

Q. Does the return here that you have seen correctly express that vote?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. Yes, sir; that is the way we counted them up.

Q. Did John M. C. Smith receive any votes that belonged to Claude S. Carney?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. No, sir.

Q. Did John M. C. Smith receive any votes that were not cast for him?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. No, sir; not as far as I know.

Q. I show you Exhibit 52 now, and call your attention to page 12, the vote on Congressmen in the third Congressional district, and ask you to look at that book on pages 12 and 13 and tell me whether those are the figures from which you made that statement—the figures and tallies—from which you made that statement?—A. Yes, sir.

Q. How many straight votes did John M. C. Smith receive, as shown by the tally book, or your recollection?—A. Ninety-five.

Q. How many straight votes did Claude S. Carney get?—A. He got 93.

Q. How many split votes did John M. C. Smith get?—A. He got 112.

Q. How many did Claude S. Carney get?—A. He got 57.

Q. Does the book show that you have in your hand, the number of tallies to make up those figures?—A. Yes, sir; 112 for Smith and 57 for Carney; that is, the split votes.

Q. I will ask you about Union Township, the general politics of Union Township for the last few years, has it been Democratic or Republican?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Strongly Republican.

Q. Until last fall when the Progressives came in, then what effect did it have?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and not the best evidence.

A. It took a large vote off the Republicans, of the usual Republican vote.

Q. We have read into the record the vote received by the different county officers, did the Prohibitionists or Socialist Labor have a county ticket?

Mr. ADAMS. Objected to as irrelevant and immaterial, and not the best evidence.

Q. I mean for county officers?—A. No, sir; they did not; there were three tickets.

Q. Is it not true, Mr. Tower, that a good many, or some at least, voted for Mr. Roosevelt on the Progressive ticket, that voted for the Republican ticket?

Mr. ADAMS. Objected to as incompetent and immaterial, and calling for the conclusion of the witness, hearsay and not the best evidence.

A. A good many Progressives who voted for the Progressive electors voted the State Republican ticket and for Mr. Smith—for Mr. Smith and the State Republican ticket—some voted for Mr. Carney, too.

Q. Do you know a man by the name of Charlie Day?—A. Yes, sir.

Q. Does he live in Union City?—A. Yes, sir.

Q. He still votes there?—A. Yes, sir.

Q. Was he up north just before election last fall, at Saginaw?—A. Yes, sir.

Q. How long has he been at Saginaw?—A. He has been there more than a year; I should say a year and a half.

Q. Does he come home to vote?—A. Yes, sir; his wife lives there.

Q. Did he come home to vote last fall?—A. Yes, sir.

Q. Isn't he a strong Democrat in politics—

Mr. ADAMS. I object to it as irrelevant and immaterial.

Q. (Continuing)—and didn't he watch the count of the vote very closely the day and the night and morning of the counting of those ballots?

Mr. ADAMS. I object to that as irrelevant and immaterial and calling for the conclusion of the witness.

A. He was one of the challengers for the Democratic Party and he stayed there until the last vote was counted.

Q. Did he give his personal attention to it and watch the counting of the votes?—A. Yes, sir; and also Mr. Rupright.

Q. Did you read the votes personally, call of, or, what part did you take?—A. I took in the ballots and called off the names.

Q. Didn't Mr. Day look over your shoulder at every ballot when counting up?—A. Yes, sir; he sat by the side of me.

Q. And didn't you hold the ballots on purpose so Charlie could see every one?—A. Yes, sir; he sat by the side of me and Mr. Rupright watched the other end of the table; it was pretty well guarded by two Democrats.

Q. How long have you been acquainted with the election inspectors of that precinct who acted there that day, the township clerk and the other two inspectors?

Mr. ADAMS. Objected to as irrelevant and immaterial

A. Mr. Bray, I have known for 20 years; Mr. Wooster for about five years, and Mr. McClymont for about five or six years, and Mr. Margeson about twenty years.

Q. Was the last one you mentioned the clerk?—A. No, sir; Mr. McClymont was the clerk.

Q. What sort of men are they?—A. As good men as you can find in this county.

Mr. ADAMS. I move to strike out the answer and object to the question on the ground that it is incompetent, irrelevant, and immaterial, and that the question is not sanctioned by any rule of evidence.

Q. Have you the means of knowing what their general reputation is for uprightness, integrity, and honesty?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness, and does not state any facts.

A. I have.

Q. What is that reputation?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. They have a splendid reputation around there.

Q. Referring especially to the county clerk, what kind of man is he?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, calling for the conclusion of the witness and hearsay.

A. A very honorable man, I should say.

Q. Do you think that any member of that board of election inspectors would purposely make a wrong count or commit fraud in the election?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, calling for the conclusion of the witness and his opinion.

A. No, sir.

Q. Do you know of any illegal voting or any fraud on the part of anyone during that election in that precinct?

Mr. ADAMS. Objected to as incompetent, irrelevant and immaterial and calling for the conclusion of the witness.

A. No, sir.

Q. Would you say that the canvass made of the votes in that precinct and these three exhibits put in here show the correct vote as cast by the legal qualified electors in that precinct for cross-examination on November 5, 1912?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness and not the proper manner of inquiry.

A. It was so far as we were capable of making it; we did our best.

Q. Did you change any figures from what they were before your board left the voting place?—A. I don't understand your question.

Q. Did you change any figures after the board left the voting place, the morning of the 6th day of November, 1912, over at the office of the township clerk or any place else?—A. No, sir.

Q. Were they put in those envelopes in precisely the condition so far as you could see as they are now? Are they now in the same condition as they were when they left your hands?—A. Yes, sir; exactly, as far as I can see.

Q. You saw them sealed up?—A. I did; I helped seal them up.

Q. And you saw the man start to the post office with them?—A. Yes, sir.

Q. They were delivered to the township clerk to be mailed?—A. Yes, sir.

Q. And while you did not go to the post office, you saw him go toward the post office?—A. It was raining and I stayed in the office while he went.

Q. What time in the day were they delivered to the township clerk to be—what day and what time in the day?—A. The next day after election about between 10 and 11 o'clock in the morning of the 6th of November.

Q. Before noon?—A. Yes, sir.

Q. Was the opera house locked at noon when you gentlemen went to dinner?—A. Yes, sir.

Q. Who locked it?—A. I think Mr. McClymont had the key.

Q. Did you see him unlock it again?—A. I was there when we came back; I think Mr. McClymont did.

Q. When you got in there was there anybody in there except Mr. Phillips?—A. No, sir. Mr. Phillips was not there at noon; we locked it up. We didn't lock it at night but left it with Mr. Phillips.

Q. Was there any way as far as you know, that anyone could possibly tamper with that ballot box when you went to your lunch at noon?—A. No, sir.

Mr. FRANKHAUSER. It may be understood that the board of county canvassers used the same figures that appeared in this statement book, Exhibit 50, and that they canvassed Mr. Smith's vote at 207 and Mr. Carney's at 150 in Union Township.

Redirect examination by Mr. ADAMS:

Q. When you got back there from your noon meal on election day to the voting place, were you inside of the building, the opera house, where the election was held, before Mr. McClymont got back there?—A. No, sir; we all went in together.

Q. Where were you when Mr. McClymont came there?—A. I was on the outside of the door waiting for him to come; I think he had his key.

Q. Was the door opened before Mr. McClymont got there?—A. No, sir; I think two or three of us were waiting outside and I think Mr. McClymont came with the key and unlocked it.

Q. Was that the only door of the room in which the election was held?—A. Yes, sir; the other doors were all locked on the inside.

Q. Did you try them before you went away for noon?—A. I didn't myself; but they were tried.

Q. But whether they were locked or not, you don't know of your own knowledge?—A. They were locked.

Q. You can not swear they were locked?—A. I don't suppose I could; I don't know that I went back and tried them, but they were tried all right.

Q. You say that it was raining on the morning of the 6th; that you were up there in Mr. McClymont's office to finish up the election returns?—A. Yes, sir.

Q. And put them in the envelopes and sealed them?—A. Yes, sir.

Q. You stayed in the office and Mr. McClymont went out with the returns?—
A. He went to the post office.

Q. You don't know where he went, do you, of your own knowledge?—A. No, sir; I do not. Of course, he went out.

Q. He went out of the office; that is the most you can say?—A. I know he went to the post office, or was gone about long enough.

Q. You know he said he was going, but you don't know whether he went or not?—A. Only what the record of the post office shows.

Mr. ADAMS. I move to strike out the last part of the witness's answer as incompetent.

Q. Of your own knowledge, when you were in Mr. McClymont's office on that morning when he started out with those election returns, you don't know where he went, do you—you haven't any way of knowing of your own knowledge?—A. I didn't go with him, but he went there, anyway; I guess that is right.

Q. But you don't know that he went there, of your own knowledge? You didn't see him go there, did you?—A. I saw him go out of the door with a package.

Q. You didn't see him go into the post office?—A. No, sir.

Q. You stated that a great many Progressives voted the State ticket, and that some of the Progressives voted for Mr. Smith and some for Mr. Carney; now, that was somewhat of a ballot you had there that day?—A. I know by the way they talked, Judge, and by the way the count shows.

Q. As far as they talked, that is what you heard?—A. Yes, sir.

Q. All you know besides that is what you saw in the ballots?—A. Yes, sir.

Mr. ADAMS. I move to strike out what the witness said in that regard as a conclusion and not the best evidence, and as far as the ballots show anything in that regard or what people told him, on the ground that it is hearsay.

Q. Now, you said, I think, that Mr. Carney had a large Republican vote; did I understand you that way?—A. No, sir; I didn't intend to say that; I think I said that Mr. Smith got a good many Progressive votes and that Mr. Carney got some.

Q. Counsel asked you whether the Republican vote, in fact, was not pretty badly split up that day, and you replied, in substance, that Mr. Carney had a good many Republican votes?—A. Not many Republicans, but Progressives, if I said that; Mr. Smith and Mr. Carney both got Progressive votes.

Q. As a matter of fact, it is shown by Exhibit 51, shown you a while ago—referring now to the statement book, page 7, of the votes given to the different candidates for the office of Representative in Congress—it appears, does it not, that John M. C. Smith, according to the return I show you now and hold before you, got 207 votes?—A. Yes, sir.

Q. And Claude S. Carney got 150?—A. Yes, sir.

Q. And Levant L. Rogers, 4?—A. Yes, sir.

Q. And Edward N. Dingley, 188?—A. Yes, sir.

Q. Mr. Dingley was the Progressive candidate for Representative in Congress at that election and was voted for in that precinct; you were an officer in that day?—A. Yes, sir.

Q. I don't suppose you have any independent recollection outside of these exhibits shown you here to-day what the votes were as given at that election in that precinct for the respective candidates?—A. If I hadn't seen the book I could not have told, I could not carry it in my mind.

Q. You didn't keep the tally?—A. No, sir.

Q. It took you from 5 o'clock until 4 o'clock the next morning to complete the count of the votes cast in that voting place at that election?—A. Yes, sir; two clerks kept the tally books and the other three did the counting.

Q. So you don't know what those clerks put down on the tally sheets, whether they put it down correctly as called off or not, do you, of your own knowledge, I mean, from anything you saw there?—A. I was on one side of the table and the clerks were on the other, we were all around the table, the clerks on the opposite side.

Q. From your own knowledge you can't positively swear that they put them down just as they were called off, can you?—A. Of course I think they did.

Q. I didn't ask you what you thought.—A. I think they did.

Q. Do you know of your own knowledge, the question is?—A. Of course I didn't have my eye on them every minute, but I watched Mr. Margeson pretty closely.

Q. But you were reading and calling off?—A. Yes, sir.

Q. You had a number of names on the ballot of different officers, it was a big ballot?—A. Yes, sir.

Q. A great many names on it?—A. Yes, sir.

Q. Whether the clerks put down the tallies as called off and just as called off and credited them to the candidates, respectively, for whom they were called off, you don't know of your own knowledge, do you?—A. I will say this: That I watched Mr. Margeson very closely, the other man I couldn't see.

Q. You could not at that time carry 207 votes in your head, could you?—A. But they didn't get 207; they would get so many straight votes, then you would get so many split votes.

Q. But you could not carry 207 or 150 or any other number of votes in your head?—A. No, sir.

Q. For the candidates voted for in that place that day?—A. No, sir; I had to take it for granted that they set them down right.

Q. Now, can you say on your oath, of your own knowledge, not what you suppose, but of your own knowledge, can you swear now that those clerks put them down exactly as called off and credited them to the man for whom you called them off; answer that, yes or no?—A. I think they did, that is all.

Q. Do you know of your own knowledge?—A. I don't know as I could swear to it, but I think they did; they would not have any object in doing any other way.

Q. You can't swear they did, can you?—A. Mr. Margeson did anyway, I saw him do it.

Q. What?—A. As far as I saw and I was watching him pretty closely.

Q. Did you see him put down every tally on that book?—A. No, sir.

Q. So you couldn't say on your oath now that he put them down just as they were called off and credited them to the men entitled to them and for whom you called them off, can you?—A. I would like to bet he did.

Q. Can you swear to it?—A. No, sir.

Mr. FRANKHAUSER. I object to this cross-examination here of this witness; he has not shown himself to be a hostile witness so they would have the right to ply him with searching cross-examination questions.

Q. The entire board of election, including the inspectors and clerks there at that election that day, were Republicans, were they not?—A. No, sir; they were not.

Q. The three inspectors were Republicans?—A. They were not.

Q. Who were not Republicans on that board that day as far as the inspectors were concerned?—A. Mr. Bray was a Progressive and Mr. McClymont and Mr. Margeson were Progressives; two Republicans and three Progressives.

Q. I am talking about the inspectors.—A. One was a Progressive and two Republicans.

Q. They were all enrolled as Republicans just prior to that election on that election day, were they not?—A. I think they were all enrolled as Republicans; I think they were.

Q. The two clerks at that election were Republicans?—A. They were Roosevelt men—considered so.

Q. They were enrolled as Republicans?—A. Yes, sir.

Q. Those were the only officers of the board that you had there that day?—A. Yes, sir.

Q. Now, the township clerk there, after you got through on the morning of the 6th with your count of that vote, had the key to that ballot box?—A. During the election?

Q. After you got through with the election and they were taken up to his office?—A. I had the key myself.

Q. The key to the ballot box?—A. Yes, sir.

Q. Where is the key now?—A. I have it in my house.

Q. At home?—A. Yes, sir.

Q. Did anybody else have a key to that ballot box that day that you know of?—A. I don't think so. There were but two keys, and they were on one string.

Q. Had you both keys?—A. Yes, sir; they were in a bunch of keys and I had them there.

Q. The ballot box has been in the clerk's office ever since that election?—A. Yes, sir.

Q. That was not your place of business where Mr. McClymont's office was?—A. No, sir; I have no office.

Q. You haven't the seal to that ballot box, have you?—A. No, sir.

Q. The clerk has the seal, hasn't he, that you used there?—A. I think so.

Q. But the seal you used on the envelopes there that day, containing these election returns, the election clerk had there that morning?—A. I think so; he had when he sealed the envelopes.

Mr. FRANKHAUSER. Is it conceded that the vote canvassed was 207 for John M. C. Smith and for Claude S. Carney, 150, are the same figures as shown by these returns?

Mr. ADAMS. That is conceded.

Q. I notice on Exhibit 51, the statement book, the vote on that election that day that there have been some figures scratched out and some of the words describing the figures apparently changed—is not that true on page 1?

Mr. MAYNARD. We object to that as incompetent and immaterial.

Q. That is, in the presidential electors?—A. Yes, sir.

Q. On the Republican ticket that appears in several instances, does it not?—A. Yes, sir.

Q. The tally sheet book Exhibit 52 to which your attention has been directed several times, the tallies opposite the name of John M. C. Smith and opposite the name of Claude S. Carney are lead pencil entries, are they not?—A. Yes, sir; they are.

Q. And the figures carried out in the column, "Total straight votes" and "Total split votes" and the total votes received opposite the names of John M. C. Smith and Claude S. Carney are written in in lead pencil?—A. Yes, sir.

Recross-examination by Mr. FRANKHAUSER:

Q. What is your business?—A. Well, I am supervisor of the township and I had an insurance business there; I sold out my business.

Q. Of the members of the election board in politics, you were a Republican?—A. Yes, sir.

Q. And Byron W. Bray, another inspector, was a Republican?—A. He is a Republican, but I think he voted for Roosevelt.

Q. Mr. Wooster; what was he?—A. He was a Republican.

Q. And Mr. McClymont?—A. He was a Republican but he voted for Mr. Roosevelt, or I heard him say he did.

Q. And Mr. Margeson?—A. He is a Republican, but I think he voted for Roosevelt.

Q. According to your best judgment, three out of the five voted for Roosevelt?—A. Yes, sir.

Q. The other two you think were Republicans?—A. Yes, sir.

Q. And voted for the Republican ticket?—A. Yes, sir.

By Mr. MAYNARD:

Q. Mr. McClymont when he went to his office he had the box in which the sealing wax and the election seals were and the appliances for election supplies?—A. Yes, sir.

Q. When you got these prepared and completed as they now are, they were put in envelopes and sealed with sealing wax that he had there, the election supplies of that township?—A. Yes, sir.

By Mr. ADAMS:

Q. But they were not the seals you had used there in the voting place that day?—A. I am not sure about that; I couldn't swear to that; there were two or three seals around there.

Q. Your township clerk didn't carry the seal, did he, that your election board used that day, in his possession, the one you used for sealing there on the boxes on election day November 5, 1912, he didn't have this, did he, your clerk?—A. I am not sure; I couldn't tell you about that; I never talked with him about it and never paid any attention to it; I think that there were two or three seals about alike.

Q. The clerk keeps some of them and somebody else keeps some of them?—A. I think the clerk has them, I don't know; Mr. Bray had them.

Q. Several men had those seals?—A. No, sir; I don't think so; I think perhaps the clerk has them, but I don't know; that is no part of my business that I notice. I think I saw two or three seals in a little cigar box he had them in, but I will not swear to that; I think two or three were in there.

Q. You don't know whether those were the seals used election day or not; the same identical seals?—A. The same box was there and I think he had

the same box the next morning, but whether all the seals were in there or not I don't know.

Q. How far is Union City from Coldwater, the county seat of Branch County, Mich.?—A. It is about 13 miles they call it.

Q. It is located at the same place now as then—it has not been moved since?—A. No, sir.

Q. You don't know of your own knowledge when the returns from that election got into the county clerk's possession at Coldwater, do you?—A. I don't know anything about it.

Q. You were not here when they came in—A. No, sir; I don't know anything about that.

By Mr. MAYNARD:

Q. Do you know what course the mail takes from Union City to Coldwater?—A. Well, I think if you mail a letter at noon there it gets here the next morning.

APRIL 29, 1913.

WILLIAM J. BATEMAN, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant, as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Bateman, you live where?—A. Dimondale, Windsor Township.

Q. Did you live there on November 5, 1912?—A. Yes, sir.

Q. You had been living there for some time, I take it, before that?—A. Always lived there.

Q. Your age is what?—A. Forty-one.

Q. Did you, on November 5, 1912, hold any official position in the county of Eaton, township of Windsor?—A. Supervisor.

Q. You were supervisor of that township then on November 5, 1912?—A. Yes, sir.

Q. As such supervisor you were a member of the election board at the election of November 5, 1912, in Windsor Township?—A. Yes, sir.

Q. There was but one voting place in that township at that election?—A. Only one.

Q. Who else acted on that election board at that general election?—A. Ray Burnett, clerk; Frank L. Smith and L. G. Van Derbeck, justice of the peace.

Q. Ray Burnett was township clerk?—A. Yes, sir.

Q. Those three gentlemen, together with yourself, constituted the election board at that election?—A. Yes, sir.

Q. The election board was made up of you four gentlemen?—A. Yes, sir.

Q. How were the ballots used there at that election initialed?—A. As I now remember, I think—

Mr. MAYNARD. I object to that as incompetent and immaterial and not the best evidence; it is not competent for any officer to give testimony to impeach the ballots after the election has passed, and it is not rebuttal evidence, and there is nothing in the notice of contest to warrant the taking of any such testimony.

Q. How were the ballots initialed? How were the ballots, if at all, initialed when handed to the voters at that election that day—how and in what place were they initialed?

Mr. MAYNARD. The same objection.

Mr. ADAMS. We will consent that you may have that objection to all this testimony without making it specially.

Mr. MAYNARD. Without renewing, may it extend to all the testimony?

Mr. ADAMS. Yes.

The WITNESS. Why, as far as I can remember now, they were initialed on the upper left-hand corner.

Q. There was a little corner on the ballot that was perforated?—A. Yes, sir.

Q. And that perforation had the number of each ballot on?—A. Yes, sir.

Q. The ballots that you had there and handed out to the voters were numbered consecutively?—A. Yes, sir.

Q. On these perforated corners?—A. Yes, sir.

Q. Those initials were put on those perforated corners, were they not?

Mr. MAYNARD. I will make the further objection that it is leading.

Q. State where, on that ballot, the member of the election board who put the initials on the ballot—where did he put them on the ballot?—A. I think they were put on the perforated corner.

Q. Who initialed the ballots that day?—A. Mr. Van Derbeck.

Q. When those ballots were handed to the voter for marking, and when the voter handed them in to be put in the ballot box, state whether the perforated corner of the ballot was or was not torn off before the ballot was put in the ballot box?—A. It was.

Q. Now, when you came to count those ballots, did you assist in that work?—A. Yes, sir.

Q. You may state whether or not there were any initials on any of those ballots when you counted them; I mean now the initials the inspector put on?—A. Outside of the corner, do you mean?

Q. Yes, sir.—A. I couldn't swear positively.

Q. They were all initialed on the perforation?—A. I think they were.

Q. Now, when those ballots were counted, did they or not have that perforated corner on or had it been torn off?—A. It had been torn off.

Q. With that perforated corner torn off there was no identification of the ballot at all, to identify it as having been a ballot that had been signed by any member of the election board?—A. It wouldn't show anything if torn off.

Q. It would be on that perforated corner that was torn off?—A. Yes, sir.

Q. At that election, I show you the statement book of the township of Windsor, Exhibit 82, statement book of the general election held on Tuesday, the 5th day of November, 1912, in the township of Windsor, county of Eaton; is that one of the statement books that your board made up and signed of that election?—A. I think it is.

Q. Is that your signature there on page 16?—A. Yes, sir.

Q. To the certificate at the conclusion of that exhibit?—A. Yes, sir.

Q. I call your attention to page 7 that is headed at the top of the page, "Statement of votes"?—A. Yes, sir.

Q. Will you just read this part of it right here?—A. (Reading.) The whole number of votes given for Representative in Congress, third district, was 344. John M. C. Smith, 174 and Claude S. Carney 92, Levant L. Rogers 3, and Edward N. Dingley, 75; total votes, 344.

Mr. ADAMS. I offer Exhibit 82 in evidence.

Mr. MAYNARD. I make the same objection to that.

Q. The number of the ballot each ballot voted there that day, and counted, the initials that had been put upon the ballot to identify the ballot, those you say were on that corner that had the perforation below the number and the initials?—A. Yes, sir.

Q. Then when the voter passed his ballot up to be deposited in the ballot box that perforated corner with the number and the initials of the inspector was torn off?—A. Yes, sir.

Q. There was no other number on the ballot, no other initials on the ballot that you know of except those on that perforated corner?—A. No, sir.

Q. Now those ballots when you got all through with your count at that election, what you do with them?—A. Placed them in the ballot box.

Q. Then what was done?—A. Sealed up and locked.

Q. Do you know how long the ballots remained in the ballot box sealed up and locked?—A. Until the spring election.

Q. Which was held when?—A. The 7th of April, 1913.

Q. Who had the custody of the ballot box containing those ballots up to that April 7th, 1913, election?—A. The clerk of the township.

Q. Ray Burnett is still clerk of your township?—A. No, sir; he is not now; he was up until the spring election.

Q. Did you act on the election board there in April?—A. No, sir.

Q. You were a candidate for office?—A. Yes, sir.

Q. Do you know what was done with those ballots that you put in there November 5, 1912, finally, what became of them?—A. I suppose they were burned up election day. When we get organized we generally do anyway and I suppose they did those.

Q. Do you know whether they are in existence or not?—A. I think they are burned up.

Cross-examination by Mr. MAYNARD:

Q. Was this the first time on November 5, 1912, that you ever sat on the board of election?—A. No, sir; not the first time.

Q. How long have you been on the board?—A. Just elected chairman a few times and was treasurer and clerk once.

Q. For several years have you served on the election board?—A. I presume three or four times.

Q. Where did you get those ballots you voted that day?—A. Of the clerk here.

Q. The county clerk?—A. Yes, sir.

Q. Were they the uniform ballots furnished by the county clerk during that election?—A. Yes, sir.

Q. Were the other officers here from the different precincts present the same day you got yours, to get them for their precincts?—A. I don't remember whether there was anyone else here or not. The supervisor was up with me.

Q. Have you ever been here to get the ballots before this election?—A. Not before that.

Q. Somebody else got the ballots?—A. I was not supervisor; that was the first time I had been supervisor; that was the first chance I had to come and get them.

Q. When you sat on the board any other time you were chosen to sit?—A. Yes, sir.

Q. Those ballots were delivered by you to the board, were they, on November 5, 1912?—A. Yes, sir.

Q. And opened there in the precinct?—A. Yes, sir.

Q. Did some one initial each ballot as it was delivered to the voters that day?—A. Yes, sir.

Q. Were you present all day at that election?—A. Yes, sir.

Q. Did you stay to the count?—A. Yes, sir.

Q. Do you know whether anyone voted there that day who was not legally entitled to vote at that election?

Mr. ADAMS: I object to that as calling for the conclusion of the witness and as incompetent.

A. No, sir.

Q. What have you to say whether that was an honest, fair election?

Mr. ADAMS. Objected to as incompetent and calling for the conclusion of the witness and not a statement of facts.

A. It was.

Q. When you counted up the ballots was there an honest count made of the ballots that were voted there that day?—A. Yes, sir.

Q. Did John M. C. Smith get credit for any more votes than he was entitled to at that election?—A. No, sir.

Q. Did Claude S. Carney receive credit for all the votes cast for him at that election?—A. Yes, sir.

Q. As far as you know every ballot that was handed out to voters that day was initialed by one of the board of election inspectors?—A. Yes, sir.

Q. And the vote recorded as the voter delivered it?—A. Yes, sir.

Q. Then the ballot box was opened, and there was a square, honest count?—A. Yes, sir.

Redirect examination by Mr. ADAMS:

Q. Mr. Bateman, one question, those ballots that were marked in the way you have indicated there that day were the only ballots at that election that had the different candidates' names on who were running for the office of Representative in Congress in the third congressional district?—A. Yes, sir.

Q. Those were the only ones that had the candidates on for the office of Representative in Congress at that election?—A. I suppose that is so, they were the regular ballots.

Q. You didn't see but one ballot there, one ticket there, one sheet of paper, that had the different candidates on for State offices, county officers, and for the office of Representative in Congress?—A. Yes, sir.

Q. Those were the ones that were marked in the way you have indicated?—A. Yes, sir.

Q. Is that true?—A. Yes, sir.

Mr. MAYNARD. The time having passed for the contestee to meet any of the evidence offered on this subject, we will add that to our objection made on the start.

Mr. ADAMS. We will consent now that you can answer it, if you desire, even though the time is passed, we will give you a reasonable time in which to answer.

Cross-examination by Mr. MAYNARD:

Q. I show you Exhibit 82 and ask you to state again the number of votes that were given to John M. C. Smith for Member of Congress from the third congressional district, on the Republican ticket at that election?—A. One hundred and seventy-four.

Q. Now I will turn to some of the other officers that were running for office on the Republican ticket in that precinct; take the office of drain commissioner, how many candidates were running for the office of drain commissioner at that election?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Two candidates.

Q. Who were they?—A. Ernest L. Hunter on the Republican ticket, and Fred Milburn on the Democratic ticket.

Q. How many votes did Mr. Hunter have, the candidate for drain commissioner, receive at that election on the Republican ticket?

Mr. ADAMS. I object to it as irrelevant and immaterial, and if you will consent that this objection may apply to all questions you put of like character, with that understanding I will not object especially to every question.

Mr. MAYNARD. We will concede that; the same objection shall apply to each of these officers.

Q. How many?—A. One hundred and eighty-two for Mr. Hunter on the Republican ticket.

Q. For the office of county surveyor?—A. One hundred and eighty-three on the Republican ticket.

Q. For the office of coroner on the Republican ticket, how many men ran for that office?—A. Four. I think.

Q. I mean on the Republican ticket?—A. Two, George E. Stokes and William G. Misner, one has 182 and one has 180.

Q. Take the office of circuit court commissioner, how many candidates were there on the Republican ticket?—A. Two.

Q. Who?—A. John C. Nichols and Harry H. Hartrow. Nichols received 180 and Hartrow 182.

Q. On the office of register of deeds, how many candidates were there on the Republican ticket?—A. One.

Q. Who was he?—A. Mr. Robbins; he received 184 votes.

Q. The office of prosecuting attorney, how many candidates were there on the Republican ticket?—A. One; he received 184 votes.

Q. That appears from this Exhibit 82 does it?—A. Yes, sir.

Q. On page 10 at the top of the page, how many candidates were there on the Republican ticket for county treasurer?—A. One; he received 183 votes.

Q. On page 9, how many candidates were there on the Republican ticket for judge of probate?—A. One; he received 208 votes.

Q. Who was the other candidate on that ticket?—A. Mr. Davis.

Q. What ticket was he on?—A. The Democratic.

Q. How many votes did he receive?—A. Ninety-seven.

Q. How many votes did the Republican candidate receive for the office of sheriff?—A. Mr. Storrs received 169 votes.

Q. How many for the office of county clerk on the Republican ticket?—A. Mr. Ford; 182 votes he received.

Q. From an inspection of this record Exhibit 82 did John M. C. Smith receive as many votes as either of the candidates on the Republican ticket for the office of judge of probate, county clerk, county treasurer, surveyor, or the drain commissioner?

Mr. ADAMS. Objected to as incompetent and immaterial and the conclusion of the witness.

A. I don't think he received as many.

Q. He received 174?—A. Yes, sir; and the others ran 180 or 182, along there.

Redirect examination by Mr. ADAMS:

Q. How many miles did you have to travel in coming here to give your testimony?—A. I think pretty nearly 12 miles.

Q. And 12 miles to get back?—A. Yes, sir.

Q. You were a Republican on November 5, 1912, and was elected supervisor on the Republican ticket?—A. At the spring election, yes, sir.

Q. You were elected in the spring of 1912 as supervisor of that township?—A. Yes, sir.

Mr. MAYNARD. I would like to ask the other side if they will concede that the contestee's answer was served on Claude S. Carney in the city of Kalamazoo on the 3d day of February, 1913?

Mr. ADAMS. It is admitted that the contestant served his notice of contest upon the contestee on January 8, 1913, and that the contestee served his answer to that petition upon the contestant on February 3, 1913.

RAY BURNETT, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Burnett, your full name is Ray Burnett?—A. Yes, sir.

Q. Your age is what?—A. I am 25.

Q. You live where?—A. Dimondale, in Eaton County, Windsor Township.

Q. How far did you travel to come here from your home to-day?—A. Twelve miles.

Q. It is 12 miles back to your home? You have to go 12 miles to get back?—A. Yes, sir.

Q. Were you or not a member of the election board in the township of Windsor at the general election held in that township November 5, 1912?—A. Yes, sir.

Q. Did you at that time, and had you for several months before that date, held any official position in the township of Windsor?—A. I was clerk of the township.

Q. You had been before that date elected clerk and qualified and were you on that day acting as clerk of the township of Windsor?—A. Yes, sir.

Q. Were you a member of the election board November 5, 1912, at the general election in that township being held in this State?—A. Yes, sir.

Q. Do you know who initialed, if anybody did, the ballots on which the candidates' names for the office of Representative in Congress was printed at that election day?

Mr. MAYNARD. This is all taken subject to our objection.

Mr. ADAMS. Yes; it may be so understood that the objection that was made to the testimony of Mr. Bateman when on the witness stand may apply to the testimony of this witness or any other witness we offer to-day with like effect as if counsel made the objection to the several questions propounded.

Q. Who did?—A. Mr. Van Derbeck, the justice of the peace.

Q. He was a member of the election board that day?—A. Yes, sir.

Q. Was Mr. Bateman also a member of the board?—A. Yes, sir.

Q. And Mr. F. L. Smith?—A. Yes, sir.

Q. Mr. Van Derbeck and Mr. Bateman were members of that election board?—A. Yes, sir.

Q. Now, can you state at what particular place on those ballots the initials were written?—A. Yes, sir.

Q. Where?—A. In the upper left-hand corner.

Q. Was that corner any different from any other corner of that ballot?—A. It was perforated.

Q. What was the size of that perforation?—A. I suppose there was a number on there.

Q. Those ballots that you had out there that day were numbered consecutively, were they not?—A. Yes, sir.

Q. Those ballots had been furnished your election board by the county clerk of the county of Eaton?—A. Yes, sir.

Q. To be used by your board for the voters who wanted to vote?—A. Yes, sir.

Q. Now, the numbers that were on those ballots were printed on there when the ballots were placed in the hands of the election board, were they not?—A. Yes, sir.

Q. The board did not put those numbers on?—A. No, sir.

Q. Those numbers were nearer the corners than the perforations?—A. Yes, sir.

Q. Now, when the voter got his ballot there that day the different voters that voted there that day, from the election board, state whether the corner of the ballot which had the perforation across the corner was indicated the number of the ballot when the voter received the ballot?—A. Yes, sir; it was.

Q. After the voter had brought his ballot to the board and handed it in to be deposited in the ballot box what, if anything, did your board do with that perforated corner?—A. Tore it off.

Q. Then after tearing off the perforated corner which contained the initials and number of the ballot state whether there was any proof left anywhere on

that ballot of any initials on the ballot when the various ballots were put in the ballot box.—A. I didn't see any.

Q. When you counted those ballots, when they were counted, rather, by the board after the polls closed, were those perforated corners a part of the ballot or were they not?—A. They were not.

Q. That was no part of those ballots you counted?—A. I didn't see any.

Q. Were there any initials on the ballots you counted?—A. I didn't see any.

Q. Was there more than one ballot there that day which contained the names of the Representatives for Congress—the different candidates?—A. Just one.

Q. I mean one form of ballot. Of course, you had—there were—do you know how many ballots were cast there that day, all told, that contained the names of the different candidates for the various offices voted for at that election, about how many ballots were cast, deposited in the ballot box?—A. I don't know just the number.

Q. Does that book refresh your recollection any?—A. Yes, sir.

Q. Can you state about how many ballots there were voted there that day for the candidates for Congress?—A. No, sir; I don't remember.

Q. After you got through counting the ballots do you know what was done with those ballots on which these different candidates for Representatives in Congress were printed?—A. They were put in the ballot box.

Q. What was done with the ballot box?—A. It was sealed and locked.

Q. Then what was done with the box?—A. It was taken over to my house.

Q. Did you retain it as township clerk?—A. Yes, sir.

Q. How long did you retain it with those ballots in it locked up and sealed, as you have indicated?—A. Until this spring.

Q. What time this spring?—A. The general election this spring, the 7th of April.

Q. The first Monday in April of this present year?—A. Yes, sir.

Q. From the time that ballot box was locked, when your board got through counting those ballots, those ballots in question were in that ballot box up to the April 7, 1913, election. Do you know, of your own knowledge, whether that ballot box was opened between those two dates?—A. It had not; no, sir.

Q. What was done with those ballots that were put in there November 5, 1912?—A. They were kept there until they were opened up on the 7th.

Q. Then what was done with them?—A. I think they were burned.

Q. Did you use that ballot box for the votes that were cast at the April 7, 1913, election in that township?—A. Yes, sir.

Q. Did you see an effort being made to burn those ballots?—A. I saw them in the stove; yes, sir.

Q. Do you know whether there are any of those ballots in existence now, of your own knowledge?—A. None that I know of.

Q. Where did you see an effort being made to burn them?—A. In the hall where the election was held.

Cross-examination by Mr. MAYNARD:

Q. Those ballots that you say the voters used there on the 5th day of November, 1912, were called the official ballots?—A. Yes, sir.

Q. Did that official ballot have all the names of all the officers of all the parties that were used there at that election?—A. Yes, sir.

Q. Did you see those ballots when opened there that morning?—A. Yes, sir.

Q. Do you know where they came from—where the ballots came from?—

A. Mr. Bateman brought them there.

Q. What sort of a package were they in?—A. In a sealed package.

Q. He brought them there to the polls?—A. Yes, sir.

Q. They were opened up there, were they?—A. Yes, sir.

Q. Who was the unused ballots given to?—A. They were put in the ballot box.

Q. On the morning of the election?—A. They were put in with the rest of them.

Q. That was at night?—A. Yes, sir.

Q. I mean in the morning, when you started to vote, who had charge of the unused ballots?—A. The justice of the peace.

Q. The one who initialed the ballots?—A. They were all of them in there. They laid on a table.

Q. They had a table there to put those ballots on?—A. Yes, sir.

Q. Who unrolled them?—A. Mr. Van Derbeck.

Q. When they delivered those ballots to the officer with the initials on did they call to you the number of the ballot that was issued?—A. Yes, sir.

Q. Who assisted you in keeping tally there as clerk?—A. R. R. Underwood.

Q. He held that office?—A. Yes, sir; he was clerk.

Q. He was selected by the board and acted as clerk of that board?—A. Yes, sir.

Q. At that election?—A. Yes, sir.

Q. When they called the numbers of the ballots what did the clerks do?—A. They wrote their names down.

Q. Wrote down the names of the men the ballots were delivered to?—A. Yes, sir.

Q. And put down the number of the ballot?—A. Yes, sir; they didn't put down the number of the ballot.

Q. The number was printed, was it not?—A. Yes, sir.

Q. The number of the voter was called?—A. Yes, sir.

Q. Who did that?—A. Mr. Bateman.

Q. He was the supervisor of the township at that time?—A. Yes, sir.

Q. So when these ballots were delivered to the voters, as you understand it, they were initialed by one of the justices of the peace?—A. Yes, sir.

Q. Mr. Van Derbeck?—A. Yes, sir.

Q. When he had prepared his ballot in the booth he passed through to Mr. Bateman, the supervisor, and delivered the ballot to him to be deposited in the box?—A. Yes, sir.

Q. Which side of the booth were you sitting?—A. The left-hand side.

Q. As you went in?—A. As you went in the booths.

Q. They went in on the right-hand side of the gate—of the booths?—A. Yes, sir.

Q. And received a ballot and went through the booths and came out on the same side you were sitting?—A. Yes, sir.

Q. Mr. Adams asked you if you knew whether all the ballots that were voted there—whether you knew of your own knowledge that the corner was torn off with the initialing of each ballot; is that true, witness?—A. I think they were; sure.

Q. You could see that all, could you, and did?—A. Yes, sir; he stood in front of me.

Q. Did you look at each ballot to see?—A. I didn't take particular pains to look at each one. They were supposed to be torn off.

Q. You don't know it, do you, of your own knowledge?—A. I couldn't say that I saw every one of them torn off. There was none found on there when we counted the ballots. We found no corners on them when we counted them.

Q. Did you look for that? You didn't see them all when you counted them?—A. No, sir.

Q. You kept tally, didn't you?—A. Yes, sir.

Q. It was a very long ballot—lots of names on it?—A. Yes, sir.

Q. You had all you could do to keep tally, didn't you?—A. Yes, sir.

Q. You kept it straight, didn't you?—A. I did my best to; yes, sir.

Q. You think it was an honest, straight count, do you?—A. Yes, sir.

Q. Were all the candidates given the correct count of the votes cast there for them that day?—A. I think they were.

Q. This was not your first experience on the board?—A. I have been appointed two or three times.

Q. You are acquainted there, born and brought up in that township?—A. Yes, sir.

Q. You are acquainted with the people?—A. Yes, sir; quite well.

Q. It was a good, quiet election, was it not—no trouble at the polls?—A. No, sir.

Q. As far as you know, it was an honest election?—A. Yes, sir.

Q. Witness, as far as you know, there was no ballot handed to any voter to be voted but what was initialed by Mr. Vanderbeck before he received it?—A. As far as I know; yes, sir.

S. G. VANDERBECK, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Vanderbeck, your initials are what?—A. S. G.

Q. You live in Windsor Township, county of Eaton?—A. Yes, sir.

Q. How far from Charlotte?—A. We call it 12 miles.

Q. So you have traveled miles in coming here to-day and will have to travel 12 miles to get back home?—A. Yes, sir.

Q. November 5, 1912, did you fill any official position in the township of Windsor?—A. Yes, sir.

Q. What?—A. Justice of the peace.

Q. You had been justice of the peace in that township up to and including that date for about how long?—A. A little over 10 years.

Q. So you were a member of the election board at the November 5, 1912, general election that was held in the township of Windsor?—A. I was.

Q. What did you do in the way of looking after the ballots while the vote was being taken down there that day?—A. I initialed them.

Q. There was but one ballot at that election in that township that day that had the names of the candidates on?—A. I think so.

Q. That was a large ballot and had all the State officers and county officers and the different candidates for Representatives in Congress from the third congressional district printed on one and the same ballot?—A. Yes, sir.

Q. That ballot was the official ballot, was it not?—A. Yes, sir.

Q. And was furnished by the county clerk of Eaton County to your supervisor?—A. I suppose it was.

Q. State whether one corner of that ballot had a perforated line across it.—A. It did; yes, sir.

Q. About how much was left above the perforated corner of that ballot, where it was perforated?—A. Why, an inch to an inch and a quarter, maybe.

Q. State whether or not that ballot that you handled there that day had printed numbers on that perforation nearer the corner than the perforated line.—A. Nearer the corner than the perforated line?

Q. Yes.—A. Yes, sir.

Q. Those numbers were consecutive numbers, were they not? That is, you had a certain number of ballots there that day for election purposes and they were numbered consecutively, were they not?—A. Yes, sir.

Q. You did all the initialing that was done that day, did you?—A. I think so.

Q. Whose initials did you use or write on the ballot?—A. My own.

Q. Where on those different ballots did you write your initials?—A. On the upper left-hand corner of the backside.

Q. On the backside of the ballot?—A. Yes, sir; where there was no printing on.

Q. Where, with respect to that perforated line?—A. Above the perforated line.

Q. Do you mean nearer the corner than where the perforated line was?—A. Yes, sir.

Q. Those ballots were numbered on that perforated corner and your initials were there and they handed one to each voter as he came in to vote?—A. Yes, sir.

Q. Then the ballot when the voter got it marked was handed to one of the election board?—A. To the chairman.

Q. What was done, if anything, in reference to that perforated corner before it was put in the ballot box?—A. I suppose it was torn off.

Q. You understood that was what the law required to be done?

Mr. MAYNARD. I object to what he understood.

(No answer.)

Q. If the corners were torn off the various ballots voted there that day, state whether that tore off the number of the ballot and also the initials you had put on.—A. I think it did.

Q. Did you initial any of those ballots at any other place than the place you have just indicated?—A. No, sir.

Q. Now, were you there when the ballots were counted?—A. Yes, sir.

Q. Did you notice whether any of those perforated corners were on any of those ballots that had been put into the ballot box?—A. They were not.

Q. They were all torn off, were they?—A. Yes, sir.

Q. There were no numbers on the ballots when you counted them?—A. No, sir.

Q. None of the initials on those ballots when you counted them were on?—A. No, sir.

Q. That is correct, is it?—A. Yes, sir.

Q. There were no initials of any kind on the ballots when you counted them, on the back of them?—A. I don't think there were; there was not supposed to be.

Q. What was done with those ballots that were counted there that day for Representative in Congress for the different candidates, when you completed your count and got through and ready to adjourn?—A. They were put in the ballot box and locked and sealed up.

Q. The box was locked and sealed up?—A. Yes, sir.

Q. Did you or not act on the election board at the spring election, April 7, 1913, in that township?—A. I did.

Q. Do you know whether there were any ballots in the ballot box when you got ready to begin your election April 7, 1913, in Windsor Township, when you got ready there, did you see any ballots?—A. The box was emptied when we got ready to begin the election.

Q. Did you see that ballot box unlocked on the morning of April 7, 1913?—A. Yes, sir.

Q. What was in it?—A. Why, the used and not used ballots and the corners off those ballots that had been used.

Q. Were those ballots that you have just been talking about in your last answer that had been used there voted there at that election of November 5, 1912?—A. Yes, sir.

Q. What was done with those ballots that you took out of that ballot box before you began your election on the 7th of April, 1913?—A. They were burned up.

Cross-examination by Mr. MAYNARD:

Q. Did you see them burned?—A. I did.

Q. When you locked this box up last November, who locked it?—A. Mr. Bateman, I think.

Q. Are you sure about that, or are you just guessing about it?—A. I am supposed to carry the key.

Q. Do you know who locked it?—A. No, sir.

Q. You don't know that it was locked, of your own knowledge?—A. I do.

Q. How do you know?—A. I saw it locked.

Q. Who did you see lock it?—A. I couldn't tell you.

Q. Did you have the key? Did you seal it?—A. I sealed it.

Q. How did you seal it?—A. By putting the township seal on some hot wax melted onto the cloth that covered up the hole.

Q. What did you do with the key?—A. Took it home with me.

Q. Have you got the key yet?—A. I have not.

Q. Do you know who took the key?—A. No; I don't know who has got the key.

Q. Witness, you initialed those ballots, did you, thinking you were obeying the law when you initialed them in the upper left-hand corner?—A. I did.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

Q. You were acting in good faith in putting the initials there?—A. Yes, sir.

Q. You supposed that was the lawful place?—A. Yes, sir.

Q. Had you acted in that capacity before?—A. Yes, sir.

Q. How many times had you ever acted?—A. I couldn't state.

Q. For 8 or 10 years you have been acting in that capacity?—A. No, sir.

Q. How long, several years?—A. Well, I couldn't tell you just how many, but I know I put my initials on before that.

Q. You have been in the habit, haven't you, of putting your initials above the perforated line instead of below?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. Yes, sir.

Q. You have been acquainted with the people there in the township of Windsor for a great many years?—A. Yes, sir.

Q. Born and brought up there?—A. I was not born there.

Q. You have lived there a good many years?—A. Yes, sir.

Q. You are acquainted with the people?—A. Yes, sir.

Q. Ten years you have been justice of the peace, haven't you?—A. I think it will be the 4th of July.

Q. You could not run for that office and be elected without being a Republican and well known, could you, and known to be an honest man?—A. Not very handy.

Q. Now, witness, was that an honest election?

Mr. ADAMS. Objected to as incompetent and immaterial.

A. Yes, sir.

Q. Do you know of anything being done there that in any way hindered the voters from voting for the candidates they desired to vote for throughout the day?—A. I did not.

Mr. ADAMS. I object to that as incompetent and immaterial.

Q. Did you assist in counting up the ballots?—A. Yes, sir.

Q. At the closing of the polls?—A. Yes, sir.

Q. Was there an honest count made?—A. I think so.

Q. Did Claude S. Carney receive all the votes that were cast for him at that election in that precinct?—A. I believe he did.

Q. Did John M. C. Smith receive any more than were cast for him at that election in that precinct?—A. I don't think he did.

Q. Did you deliver the votes or did Mr. Smith?—A. I delivered them.

Q. Witness, you initialed every ballot that was handed to voters that day; you know that?—A. Yes, sir.

F. L. SMITH, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Smith, your initials are F. L.?—A. Yes, sir.

Q. You live in Windsor township?—A. Yes, sir.

Q. Your age is what?—A. I am 54.

Q. You have lived in that township for quite a number of years?—A. Yes, sir.

Q. Did you on November 5, 1912, hold any official position in the township of Windsor?—A. Yes, sir.

Q. What was it?—A. Justice of the peace.

Q. How long had you been justice of the peace up to that date, including that day?—A. Two or three years.

Q. By virtue of your office as justice of the peace in that township you were qualified under the statute and became eligible to be a member of the election board?

Mr. MAYNARD. I object to that as calling for the conclusion of the witness and as leading.

Q. You were a member of the election board?—A. Yes, sir.

Q. November 5, 1912, in Windsor township?—A. Yes, sir.

Q. And acted as such on the board?—A. Yes, sir.

Q. From the time the polls opened until the work of that board was completed?—A. Yes, sir.

Q. Mr. Bateman, Mr. Burnett, and Mr. Vanderbeck were associated with you as members of the election board that day?—A. Yes, sir.

Q. How far did you travel in coming here to-day?—A. About ten miles and a half.

Q. You have to travel back ten miles and a half to your home?—A. Yes, sir; I expect so.

Q. Well, Mr. Smith, now, who, if anybody, initialed the ballots there that day at that general election?—A. Mr. Vanderbeck.

Q. Did anybody else initial any ballots there that day that you know of?—A. No, sir.

Q. What did you do while the voting was going on?—A. I took down the names and the numbers when they came out.

Q. Mr. Bateman did what?—A. He put the ballots in the box.

Q. Received them from the voters?—A. Yes, sir.

Q. You may state whether you noticed Mr. Bateman tear the perforated corner off the ballots before they were put into the ballot box.—A. I think so.

Q. What was done with those perforated corners that were torn off?—A. They were put in another box.

Q. What did Mr. Burnett do while the voting was going on?—A. He was the clerk.

Q. Did you notice where those ballots were initialed—what part of the ballot?—A. Not particularly at the time.

Q. Did you afterwards?—A. Why, no; I don't know as I did particularly.

Q. Did you look at any of those corners that were torn off at any time?—A. Not to notice them; no, sir.

Q. Now, you were there when they counted the ballots that day?—A. Yes, sir.

Q. Did you notice whether there was one corner of each ballot torn off when you counted, that is, that had been torn off?—A. Yes, sir.

Q. Were there any numbers on those ballots that you counted that had been voted?—A. No, sir.

Q. Every ballot that had been voted, the number that was on the back of the ballot had been torn off before putting it in the ballot box?—A. Yes, sir.

Q. Did you notice whether the initials of Mr. Vanderbeck were on the back of any of those ballots that you counted?—A. I didn't see any.

Q. Were you a member of the election board at the spring election held in that township on April 7, 1913?—A. Yes, sir.

Q. Do you know what was done with the ballots that were voted November 5, 1912, when your board got there with this work at that time?—A. They were put in the stove and burned up.

Q. When?—A. In the morning before we commenced to vote.

Q. They were put in the stove that day?—A. The 7th of April, 1913.

Q. When you got through with your work on the night of November 5, 1912, what did you do with those ballots that had been voted on that day?—A. Put them in the ballot box.

Q. What was done then?—A. They were locked and sealed.

Q. You next saw those ballots, you say, on April 7, 1913?—A. Yes, sir.

Q. When your election was held in that township?—A. Yes, sir.

Q. Did you see that same—use that same ballot box there April 7, 1913?—A. That was the only one we had; we used all we had.

Q. On April 7, 1913, did you open up this ballot box you had used there November 5, 1912?—A. Yes, sir.

Q. Was it or not locked and sealed when your board met there to hold the election April 7, 1913?—A. It was.

Q. Did you see it unlocked?—A. Yes, sir.

Q. State whether you saw the ballots taken out of that box.—A. I did.

Q. Were those the same ballots that were taken out there April 7, 1913, that were put in there the night of November 5, 1912?—A. I didn't look at them.

Q. You say you saw them burned?—A. Yes, sir; I saw them burned.

Cross-examination by Mr. MAYNARD:

Q. Do you remember who burned them?—A. I couldn't say. One of the appointed men, I think, burned them, but I am not sure.

Q. Who was appointed?—A. Mr. Murphy was appointed chairman, and Mr. Bateman was clerk, and another man was assisting there.

Q. Now you say that you handed the ballots out?—A. No, sir.

Q. Didn't you hand the ballots to the voters?—A. Yes, sir.

Q. Who did that?—A. Mr. Vanderbeck.

Q. What did you do?—A. I wrote down their names and took the numbers of the tickets.

Q. On the tally book?—A. No, sir; on a list separate, checked them as they voted.

Q. You took down the names of the men to whom the ballots were delivered with the number of the ballot?—A. Yes, sir.

Q. The ballots were numbered from one up, consecutively?—A. Yes, sir.

Q. Then when they passed through the booths and presented their ballots there, did you check them off—did they call out the number?—A. Yes, sir.

Q. So you would know that it was the same ballot they received?—A. Yes, sir.

Q. That is the part you took in the election?—A. Yes, sir.

Q. How long have you been a resident there in the township of Windsor?—A. Upward of 40 years.

Q. You are acquainted with the people who voted there, are you not?—A. Yes, sir; to quite an extent.

Q. Was it an honest election?—A. Yes, sir.

Q. Did you help count up?—A. Yes, sir.

Q. It was an honest count, was it not?—A. Yes, sir.

Q. Claude S. Carney, you think, got all the votes credited to him that were cast for him at that election?—A. Yes, sir; all we could find.

Q. Did John M. C. Smith get any more than were cast for him by the voters?—A. No, sir.

Q. Witness, when that ballot was handed to the voters that day were they initialed before that by Mr. Vanderbeck, the justice of the peace?—A. Yes, sir.

Q. Then, as far as you knew, they went to the booths and marked their ballots and folded them up; they came out and delivered them to Mr. Bateman, who was the supervisor and chairman of the board, to be deposited in the ballot box?—A. Yes, sir.

Q. As far as you know, that ballot was intact just as it had been initialed by Mr. Vanderbeck when handed to Mr. Bateman?—A. Yes, sir.

Redirect examination by Mr. ADAMS:

- Q. You were a Republican at the time of the November 5, 1912, election?—
A. Yes, sir.
Q. Mr. Vanderbeck was a Republican?—A. I couldn't say.
Q. He was elected on the Republican ticket as justice of the peace?—A. Yes, sir.

WILLIAM J. BATEMAN, recalled for further cross-examination by Mr. Maynard, testified as follows:

- Q. Mr. Bateman, did every voter who voted there that day present to you a ballot on which were the names of the candidates for the several offices voted for were printed—did he present to you a ballot with the initials of Mr. Vanderbeck on the corner when he handed it to you?—A. He did; yes, sir.
Q. When you received that ballot from the voter what was the first thing you did?—A. Tell the man's name and number and tore off the corner of it.
Q. The number of his ballot?—A. Yes, sir; and tore the corner off.
Q. The voter had nothing to do with tearing the corner off?—A. No, sir.
Q. After you tore the corner off you voted it after it came into your hands after the voter got through with it?—A. Yes, sir.
Q. When you did that did you do that in good faith?—A. Yes, sir.
Q. Did you think at the time it was the law that the initials should be placed above the perforated line, or below?
Mr. ADAMS. Objected to as incompetent and immaterial.
A. I did.

Redirect examination by Mr. ADAMS:

- Q. Now, Mr. Bateman, I thought perhaps you did not understand the question. Now, at the time that you discovered that the initials were put on the perforated corner of the ballot that day while the election was in progress, you were rather surprised yourself, you thought it was wrong to put the initials there?—
A. I didn't know exactly which place it was, but the older members of the board said that was right.
Q. You thought it was not right?—A. I did at the time, just as far as I knew.
Q. You were a new member of the board?—A. Yes, sir.
Q. Did you give way to the justice of the peace who had been on the board for some years before?—A. Yes, sir.

Recross-examination by Mr. MAYNARD:

- Q. You didn't know what the law was, did you?—A. Not exactly; no.
Q. You have found out since, haven't you?—A. Yes, sir.
Q. But at that time you acted in good faith, supposing you were doing it honestly and as the law required?—A. Yes, sir; I read the law part way down.

Redirect examination by Mr. ADAMS:

- Q. I call your attention to page 55 of the revision of 1911, State of Michigan, laws relating to elections, paragraph 159, section 3632; you didn't know that was the law there that day?—A. No, sir.
Q. On November 5, 1912?—A. No, sir.
Q. I show you page 61 of this same law; you did not know on November 5, 1912, when you were on that election board that there was such a provision as that in the statutes of the State of Michigan as section 167?—A. Yes, sir.
Q. Did you know that there was such a statute as that on November 5, 1912?—A. I did.
Q. Did you know on November 5, 1912, when on that election board when you were counting the ballots that there was any such a provision as that contained in section 173, pages 62 and 63, of this book, revision of 1911 of the State of Michigan laws relating to elections?—A. I didn't understand it exactly that way; no, sir. I thought it was simply on the corner.

Recross-examination by Mr. MAYNARD:

- Q. As far as your experience in elections go in that township, your board and yourself had been getting the matter straightened out about where you should mark the ballots at the last April election, didn't you?
Mr. ADAMS. Objected to as irrelevant and immaterial.
Q. I mean putting the initials of the inspectors on the backs of the ballots?
Mr. ADAMS. The same objection.
A. That was last election we got it straightened out.

Q. Before the board of election?—A. Yes, sir.

Q. Then you got it straightened out and they were all initialed below the perforated corner?—A. Yes, sir.

Q. Before that they were initialed above the perforated corner?—A. Yes, sir.

Redirect examination by Mr. ADAMS:

Q. There was no chance for anyone to see what had been done as far as initialing those ballots were concerned while those ballots were in the ballot box on April 7, 1913, without opening that ballot box, was there?—A. No.

Mr. MAYNARD. Objected to as leading.

Recross-examination by Mr. MAYNARD:

Q. Was there anything done by your board after the November election trying to secrete the manner in which you initialed the ballots at that election?—A. No, sir.

Q. Was there any question in your mind but what you had conducted that election strictly according to law?

Mr. ADAMS. Objected to as incompetent and immaterial.

A. No, sir.

Redirect examination by Mr. ADAMS.

Q. Did Mr. Carney come to see you about this matter, Mr. Bateman?—A. He was to the store there one day.

Q. How long ago?—A. I presume a couple of weeks or three weeks; I don't just remember exactly now.

Q. That was the first time he was there to see you about it?—A. Yes, sir.

Q. Then you members of the election board had not commented upon what had occurred there on election day as far as initialing those ballots above that perforated corner was concerned?—A. No, sir.

Q. You kept it quiet?—A. We didn't say anything about it.

Q. You kept it quiet, didn't you?—A. We didn't keep quiet.

Q. There had been no talk about it?—A. No, sir.

Q. That was the 18th of April that Mr. Carney came to see you about it?—A. Not a great while ago I know.

Q. Last week?—A. I don't remember just when it was.

Q. It was last week, was it?—A. Not a great while ago; I couldn't say whether one week or two.

Recross-examination by Mr. MAYNARD.

Q. You have been asked if you did not keep that quiet or whether you were not advertising it; have you had a thought that there was something wrong about it; do you know of anything in your own mind that would cause such a remark to be made to you?—A. No, sir.

Q. Was it talked one way or the other; anything said about that, about your having marked the ballots wrong, until after this contest began?—A. No, sir.

Redirect examination by Mr. ADAMS.

Q. That was after we commenced taking testimony here you first talked about it?—A. I think it must have been; that was some little statement in the paper, that was all.

Q. Then you talked about the matter among the members of the board?—A. I don't know that I talked with the board about it at all.

Q. I mean the members of the election board?—A. We might when the voting was going on.

Q. That is the only place you did talk about it?—A. Yes, sir.

S. G. VANDERBECK, recalled, testified further on behalf of the contestant, as follows:

Examined by Mr. ADAMS.

Q. Do you remember the day or what time Mr. Sowers came over to see you—an attorney here in Charlotte—came first to see you about this matter we have been talking about?—A. On Friday.

Q. What week?—A. I know it was Friday because my wife was not home.

Q. You think it was Friday of last week?—A. I couldn't tell; it was not last week. It was on Friday that Mr. Sowers came there; my wife was not at home Friday and she was Saturday. It must have been a week ago last Friday.

Q. Did he come to see you about what you knew about those ballots having been perforated in the manner you have testified about?—A. He did not state it that way.

Mr. MAYNARD. I move to strike out the testimony already given as hearsay.

Q. Did anyone come to see you with reference to the matter—the manner in which the ballots had been initialed at that November 5, 1912, election in the township of Windsor?—A. A week ago last Friday.

Q. He came to see you?—A. Now, a man came down there; he did not give me his name, but when I was down to Dimondale a night or two after that they told me his name was Sowers.

Q. That was the first that anybody had come to see you about it?—A. Yes, sir.

Q. That was a week ago last Friday?—A. Yes, sir.

Q. You did not see Mr. Carney that day?—A. No, sir.

RAY BURNETT, recalled, testified further on behalf of the contestant as follows:

Examined by Mr. ADAMS:

Q. Do you know Claude S. Carney, the contestant in this matter?—A. Yes, sir.

Q. Did you see him at Dimondale, in Windsor Township, a short time ago?—A. Yes, sir.

Q. About how long ago did you see him last over there?—A. I think it was two weeks or a week; somewhere around there; I couldn't state the date exactly.

Q. Do you know who was with him at the time, if anybody?—A. Mr. Sowers, I think.

Q. A short man?—A. Yes, sir.

Q. Did you have any talk with Mr. Carney then with reference to the manner in which the ballots had been initialed on election day, November 5, 1912, in the township of Windsor?—A. Together with Mr. Carney and the other man.

Q. In Mr. Carney's presence?—A. Yes, sir.

Q. Was that the first talk you had with Mr. Carney or Mr. Sowers or anybody in Mr. Carney's presence in reference to that matter?—A. Yes, sir.

APRIL 30, 1913.

HARRIET MARSH, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Miss Marsh, you live in the city of Kalamazoo?—A. Yes, sir.

Q. And have lived here, I suppose, some time?—A. Five or six years.

Q. Are you engaged in any work?—A. Yes, sir.

Q. Have you been connected with the Normal School?—A. No, sir.

Q. Are you a member of the board of education of Kalamazoo?—A. Yes, sir.

Q. How long have you been a member of that board—elected as a member of that school board?—A. I was elected a member of that board.

Q. Were you in attendance at the voting place of the seventh precinct of the third ward of the city of Kalamazoo at the general election held in this city on the 5th day of November, 1912?—A. Yes, sir.

Q. You were there at the election place for what purpose that day?—A. I was there, I presume, to sort of remind people that the question of woman suffrage was up.

Q. You were interested in the suffrage movement?—A. Yes, sir.

Q. At that election the question of woman suffrage was being voted on?—A. Yes, sir.

Q. There was a ballot there, was there not, at that voting place for people to use in voting upon woman suffrage if they desired to do so?—A. Yes, sir; it was thought if a woman was there it might remind them of it; that was the idea.

Q. What time did you get there?—A. A few minutes before 7 o'clock.

Q. How long did you stay there?—A. I think it was between 12.15 and 12.30.

Q. Then did some other lady come to take your place?—A. Yes, sir; I waited until Mrs. Oldfield came.

Q. Where did you sit when you were there, or stand?—A. I didn't stand; I was sitting part of the time by the window to the left-hand side of the booths and afterwards I was sitting almost by the door.

Q. Were you within or without the railing?—A. It was a sort of a door, sort of a half door at which the people stood when they received their ballots.

Q. You were somewhere near where the inspectors of the election board were; how close?—A. There was a half door at which the people stood when they received their ballots and I sat between that and the window. I was about as far from them as I am from that small table; nearly as far off as that table; there was a long table at which the ballots were; that was the nearest one.

Q. Do you know Mr. Ben O. Bush?—A. Was he one that had matters in charge?

Q. He was on the board.—A. I suppose I do.

Q. Do you know Mr. Chase, quite a large man?—A. He was the one that put the ballots into the receptacle. I suppose that was Mr. Chase; I didn't know him at the time.

Q. What did you do, if anything, with any of the ballots at any time while you were there that day?—A. I never touched them.

Q. You didn't touch a ballot?—A. No, sir.

Q. Didn't handle them at all?—A. No, sir.

Q. Or have anything to do with them or handle them?—A. No, sir.

Q. Was there another lady there during the afternoon?—A. No, sir.

Cross-examination by Mr. MAYNARD:

Q. Did you see the election booths?—A. Yes, sir; I saw them.

Q. Did you see the people going into the booths and marking their ballots?—

A. I didn't see them mark their ballots; I saw them go in.

Q. Take the ballots and go in?—A. I saw them take their ballots and go in; then, presumably, handed them to Mr. Chase.

Q. He was the man who deposited them in the ballot box?—A. Yes, sir.

Q. Were you in the same room where the booths were?—A. No, sir; there was a small hall on the other side. They went into the booths from that.

Q. From the hallway?—A. Yes, sir.

Q. You were where the ballots were handed through this half door?—A. Yes, sir; the ballots were on the table.

Q. This table was not in the room where the booths were?—A. Not the table I was to; I didn't go into the booths at all; I don't know whether there was a table there or not; but not the table I was at.

Q. The table you refer to was not in the room where the booths were, do you mean?—A. Do I understand you to speak of both places, the small room in which the men entered to mark their ballots?

Q. Yes.—A. No, sir; it was not in there.

Q. It was in between?—A. You couldn't see from the booths at all. There was a half a doorway and a hall leading to the front door; then at the left of that were the booths.

Q. There was no railing, then, at all?—A. No, sir. There was a sort of a half door between the hall and the room in which I sat.

Q. But no railing, however, surrounding those booths?—A. The booths were inside of the place, understand.

Q. Do you know whether there was a railing there that day at all?—A. No, sir; I don't recollect of any.

Q. There was a table there with the ballots spread out on?—A. Yes, sir.

Q. When the voter came to vote some one picked one of the ballots and handed it through the half door?—A. Yes, sir.

Q. Did you see any amendments there?—A. Yes, sir; on the table.

Q. You were there to remind people of the fact that woman suffrage was to be voted on; that was your object?—A. Yes, sir; to stay there simply for that.

Q. When they were handed those ballots they were not within the railing—the voters were not?—A. The voters were on the outside of the door.

Q. In the room out there?—A. Yes, sir.

Q. There was a door there?—A. Outside of the outer side of the front door.

Q. They got their ballots where?—A. Over this partition.

Q. The half door?—A. Yes, sir.

Q. Did you see them go through?—A. I saw them in the booths; of course the door was shut.

Q. Then you could see the booths?—A. Yes, sir.

Q. From where you were?—A. Yes, sir; I saw them go in the door; I couldn't see inside. I sat here in front of this little screen doorway.

Q. And not to the door where they got the ballots?—A. Yes; I was in the hall like, two or three doors from where the ballots were. I could see the booths if I would lean over like. I could see all of them.

Q. One of the booths was near to the west end?—A. Yes, sir.

Q. You were not in the room with them?—A. No, sir.

Q. Was there a partition between you and the room where the booths were?—A. A little half doorway.

Q. That was between you?—A. Yes, sir.

Q. When you came in the doorway there was a little narrow hall as you entered the doorway. From this doorway to the left-hand side you walked along to the end of the hall; then you opened this screen partition and you were then in the room where the ballots were—where they came out—you were in there?—A. Yes, sir.

Q. Was there anyone else in there besides the man who delivered the ballots?—A. I don't know their names.

Q. They were in there?—A. Yes, sir; four or five.

Q. All the forenoon?—A. Yes, sir.

Q. And in addition to those four or five, did you see a man that was receiving ballots and depositing them in the ballot box?—A. Yes, sir.

Q. The man you called Chase?—A. Yes, sir; he was standing by the window.

Q. Were there any clerks that was keeping tally of the votes and keeping count of them?—A. Why, there were two or three that sat there keeping the count.

Q. Where Chase was?—A. Just the other side of Chase; their names were called.

Q. When they passed the ballots to the voters was there any declaration made of the name of the voter?—A. Yes, sir; the voter's name was called.

Q. By whom?—A. I can't answer that question; I think Mr. Bush.

Q. The one called Ben O. Bush?—A. Yes, sir.

Q. He called the number, did he?—A. Just called the name. I can't say; several sat there. I couldn't say which called the numbers and which called the names. I know the voice calling the names corresponded to the number, and then somebody looked on the book and they repeated that. For instance, there was a difference in residence in one case.

Q. As you understood, you were simply there for the sole object of reminding people to vote for woman suffrage?—A. Yes, sir.

Q. And that is all?—A. Yes, sir.

Redirect examination by Mr. ADAMS:

Q. You didn't say anything to any voter about voting?—A. No, sir; certainly; nothing.

Q. What, if anything, did you say to any voter during any time you were there that day?—A. I didn't say anything to any voter.

Q. You were simply there so they might see that a woman was there?—A. Yes, sir.

Q. That was the object of your being there?—A. Yes, sir.

Q. Did you participate at all in the work of the board there—the inspection board—that day?—A. No, sir; I did not. I went away shortly after noon and didn't return.

Q. You were simply there to look on?—A. Yes, sir.

WM. W. ALLEN, recalled, testified in behalf of the contestant as follows:

Examined by Mr. ADAMS:

Q. Mr. Allen, you testified in this case on a former day?—A. Yes, sir.

Q. On behalf of the contestee?—A. Yes, sir.

Q. John M. C. Smith?—A. Yes, sir.

Q. I believe that you testified that you were one of the board of inspectors at the election held in the township of Texas, county of Kalamazoo, at the November 5, 1912, election?—A. Yes, sir.

Q. At which Congressmen were voted for?—A. Yes, sir.

Q. Were you or not at the time that you entered upon your duties as an inspector of that election holding any official position in the township of Texas?—A. I was justice of the peace.

Q. How long had you been justice of the peace?—A. Well, I was on my fourth year at this time.

Q. Now, did you or did you not administer an oath to any of the officers of that election there that day before you began work on that board?—A. I think I did to part of them.

Q. In your official capacity, did you administer that oath?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. I was justice of the peace.

Q. Did you administer oaths to those there that day as justice of the peace?—A. Yes, sir.

Q. Now, do you know Charles Ray?—A. Yes, sir.

Q. Was he holding any official position in the township of Texas at that time?—A. He was justice of the peace.

Q. I show you the poll book, Exhibit 83. This is the poll book or one of the poll books that your board used November 5, 1912. there in conducting that election, isn't it?—A. Well, I couldn't swear to that as being the identical one without looking at it.

Q. Look at it and satisfy yourself.—A. I find my name is there in this book—I can swear to that—in two places, three places in my handwriting, four or five places; that is all.

Q. That was the poll book you used and made out there that day?—A. Yes, sir.

Q. Now, you will notice that you administered the oath to William J. Campbell?—A. Yes, sir.

Q. And to Charles Ray as inspectors?—A. Yes, sir.

Q. And to Frank Harrison as clerk?—A. Yes, sir.

Q. And to Leon Burdick as clerk?—A. Yes, sir.

Q. And to Mr. Francis as gatekeeper?—A. Yes, sir.

Q. And to Mr. Jeffreys as gatekeeper, didn't you? It so appears by that Exhibit 83.—A. I think I did, to all of them; that is my recollection.

Q. Except yourself?—A. Mr. Burdick and myself. I think the oath was administered to us by Mr. Ray, if I remember right.

Q. It appears here the oath was administered; that Burdick was sworn before Charles Ray.—A. Yes, sir.

Q. Charles Ray at the time of that election was holding the office of justice of the peace, you say?—A. Yes, sir.

Mr. MAYNARD. Objected to as incompetent and immaterial and not the best evidence.

Q. Do you know of your own knowledge that Charles Ray had been acting as justice of the peace in the township of Texas up to the 5th day of November, 1912?—A. Yes, sir; and had been for some time.

Q. These oaths that you administered to these various inspectors, clerks, and gatekeepers on that particular election board, you administered as what officer?—A. As justice of the peace.

Cross-examination by Mr. MAYNARD:

Q. What was your official character when you administered those oaths?—A. I was a justice of the peace.

Q. You signed your name to them?—A. Yes, sir.

Q. This is signed by W. J. Campbell?—A. Yes, sir.

Q. You didn't put down any official character to your name?—A. Yes, sir.

Q. They are blank oaths signed by men who took the oaths, and you signed your name without any official character appended to them?—A. Yes, sir; just as it appears there.

ALBERT T. TEN BUSSCHEN, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant, as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Ten Busschen, you reside in the city of Kalamazoo?—A. Yes, sir.

Q. Do you hold any official position here?—A. Alderman.

Q. How long have you been alderman this last time?—A. A little over a year; I was elected this last spring.

Q. You were alderman of the city of Kalamazoo on the 5th day of November, 1912?—A. Yes, sir.

Q. And acted in what capacity?—A. In that capacity.

Q. Did you act on the election board of the general election held in the city of Kalamazoo on the 5th day of November, 1912, in the tenth precinct of the fourth ward of the city of Kalamazoo?—A. Yes, sir.

Q. Was that book made by your election board?—A. It was.

Q. I notice your name there subscribed to the first oath as inspector, taken before the city clerk.—A. Yes, sir.

Q. Clarence L. Miller?—A. Yes, sir.

Q. Is that your signature, Albert T. Ten Busschen?—A. Yes, sir.

Q. Now, then, notice your signature there to the certificate of Frank B. Godfrey as inspector, A. P. Stiles as inspector, and Paul Jersey as inspector.—A. Yes, sir.

Q. And Edward De Swartz.—A. Yes, sir.

Q. As clerk of election?—A. Yes, sir.

Q. And R. R. Creeling as clerk of election?—A. Yes, sir.

Q. And W. F. Groonick as clerk of election?—A. Yes, sir.

Q. And Mr. Leggo as clerk of, or gatekeeper of, election?—A. Yes, sir.

Q. And John Nyland as gatekeeper. Is that true as shown by that exhibit?—A. Yes, sir.

Q. I notice that under the oath in each one of those names appears your name, Albert Ten Busschen, as having administered the oath to those several gentlemen. Is that correct?—A. Yes, sir.

Q. Now I notice that there is no official designation to your signature under those oaths. In what capacity did you act in administering those oaths there that day to those several members of the election tribunal?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. As chairman of the board.

Q. Of inspectors?—A. Yes, sir.

Q. Were you chairman of the board of inspectors when you administered those oaths?—A. I was.

Q. When did you administer the oaths to those men and each of them?—A. In the morning just before we opened the polls.

Q. Before you opened the polls?—A. Yes, sir.

Q. When had you been sworn in as inspector before the city clerk?—A. It was one evening before that time, I am not positive what evening it was.

Q. Had you been sworn in as an inspector by the city clerk, of the city of Kalamazoo, prior to the 5th day of November, 1912?—A. I had.

Q. You were sworn in as inspector to act at that particular election as such inspector?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. The tenth precinct is in what ward?—A. The fourth ward.

Q. Is there more than one precinct in that ward?—A. Yes, sir.

Q. Two precincts?—A. Yes, sir.

Q. How many aldermen are there in that ward?—A. Two aldermen.

Q. There were not aldermen enough to go around the precinct?—A. No, sir.

Q. How did you get to be chairman of that board that day?—A. Well, being alderman the city charter made me chairman of the board of election, if it were not for the fact—

Q. You were not elected as chairman of that board, were you at all?—A. I was not; no, sir.

Q. You simply went there as chairman as alderman of that ward and took upon yourself the duties of chairman of the board?—A. Well, virtually; yes, sir.

Q. Then you administered the oaths after you assumed that character and swore them in as chairman of the board?—A. Yes, sir.

Q. In fact, and in truth, at that time you did hold that position, did you?—A. I think I did.

Q. What is that?—A. I think I said that the charter of the city of Kalamazoo makes me, as alderman of the board, chairman of the election.

Q. One of your precincts had to go without a chairman; didn't it?—A. They elected a chairman.

Q. Have you looked it up?—A. To be frank I have not, I simply understand it to be that way and it has been that way.

Q. I suppose there may be a provision for the election of a chairman?—A. Well, yes, most boards elect their chairman.

Q. How was that election board in your precinct formed?

Mr. ADAMS. What election board?

Q. How was it organized in that precinct for this election of November 5?—
A. In what way do you mean?

Q. How did you get your inspectors of election?—A. Why, the council appoints.

Q. Is that a charter provision?—A. I think so.

Q. Or do the aldermen appoint?—A. The council has the appointment of them.

Q. That is a charter provision?—A. I think so.

Q. I am getting at the way it was organized at that particular election.—A. You mean as to the election inspectors?

Q. Yes, sir.—A. They are appointed by the council and after the appointments are made—

Q. How do they obtain the names?—A. Why, the way we usually get our boards—

Q. I am not asking you usually, but this November 5, 1912, election?—A. The way they are obtained was by the alderman, the senior alderman, of the different wards reading off the names of the inspectors of election of the different precincts and then the council confirms the appointments so made; they are virtually appointed by the senior alderman.

Q. Was that done in this case?—A. That is done in every case that I know of.

Q. Was that done in this particular case?—A. As far as I can remember.

Q. Who was the senior alderman?—A. E. E. Labadie.

Q. Did he read off the list of names to the council of the inspectors of that election?—A. Yes, sir.

Q. Did he read off the list of the names of the clerks?—A. Yes, sir.

Q. Were they all voted upon by the council and appointed that way?—A. They were; yes, sir.

Q. That is the way they received their appointments for the organization of that particular board at that election?—A. Yes, sir.

Q. This poll book, Exhibit 84, was a blank book that was used by your board of election inspectors in the tenth precinct of the fourth ward of the city of Kalamazoo, county of Kalamazoo, at the November 5, 1912, election?—A. Yes, sir.

Q. Those blank oaths are the oaths that are in the book?—A. Yes, sir.

Q. And the oaths they took were those you administered there and signed your name to without any official designation under your name?—A. Yes, sir.

Q. The oaths here are the oaths you gave to the gatekeepers?—A. Yes, sir.

Q. Read the first oath there.—A. (Reading.) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of inspector of this election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Albert Ten Busschen."

Q. What is the rest of it?—A. "Subscribed and sworn to before me this 5th day of November, A. D. 1912. Clarence L. Miller, city clerk." When I told you that I was sworn in the evening before I must have been mistaken; it was on the 5th day of November I was sworn in. Oftentimes they are sworn in the night before.

Q. I see that this is the first oath that is in the exhibit?—A. Yes, sir.

Q. Did you read your signature to that oath?—A. No, sir; I will read it now; Albert Ten Busschen.

C. H. LITTLE, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant, as follows:

Direct examination by Mr. ADAMS:

Q. You are the same Little who testified formerly here in this contest?—A. Yes, sir.

Q. I show you Exhibit 85. Were you holding any official position in Kalamazoo November 5, 1912?—A. Yes, sir; I think I was on the board of light and water commission at that time.

Q. I show you Exhibit 85. Examine that and tell me what it is.—A. It is the poll book of the general election held on Tuesday, the 5th day of November, 1912, in the fourth precinct of the second ward of the city of Kalamazoo.

Q. Did you act on that election board in that fourth precinct in the city of Kalamazoo at that general election held November 5, 1912?—A. Yes, sir.

Q. I notice under the oath of inspector of election, the first oath there is in the book, it seems to be signed by C. H. Little. Is that your signature?—A. Yes, sir.

Q. Read that certificate?—A. (Reading.) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of inspector of election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. C. H. Little. Subscribed and sworn to before me this 5th day of November, A. D. 1912. Clarence L. Miller, city clerk."

Q. Did you take that oath before the city clerk, Clarence L. Miller?—A. Yes, sir.

Q. I notice that the other oaths, that to Thomas Carroll, Mr. McQuigg, and Frank D. Stevens, John E. Crose as clerks of election, Charles M. Bennett as clerk of election, and William J. Robins, as clerk of election, and Joseph Palmer as gatekeeper and G. D. Griffing as gatekeepers of election, as shown by this—those were there and you administered the oath?—A. Yes, sir.

Q. Your name appears on that exhibit there as having administered the oaths to each one of those other officers whose names I have just read?—A. Yes, sir.

Q. There appears no official designation to your signature, in connection with those oaths; in what official capacity, if any, did you administer the oaths to these several inspectors of election and gatekeepers of the election board there that day?

Mr. MAYNARD. Objected to as incompetent and immaterial and not the best evidence.

A. I administered them as chairman of the board.

Q. You were an inspector?—A. Yes, sir.

Q. You acted as chairman of that board there that day, did you?—A. Yes, sir.

Q. Had you taken the oath before the city clerk, Clarence L. Miller, before you administered any one of those oaths to those other men who acted there in those several capacities on that election board there that day?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. The oath you have read, being the first oath that appears on that book, is just as you took it, isn't it?—A. Yes, sir.

Q. And the only oath you did take?—A. Yes, sir.

Q. You say you administered these other oaths as chairman of the board?—A. I was chairman; yes, sir.

Q. How did you become to be chairman?—A. Because I was elected chairman by the gentlemen there.

Q. That is, when you came in?—A. Yes, sir.

Q. And before you commenced to vote?—A. Yes, sir.

Q. Clarence L. Miller went around in the morning and administered the oaths at the different precincts?—A. Well, I went to the city hall early in the morning.

Q. You got yours early in the morning?—A. He came with some supplies; I think it was then.

Q. The official capacity you claimed to be acting in, that is, chairman of the board, when you administered those oaths?—A. After I was appointed chairman; yes, sir.

Q. They had organized, had they, before the oaths were administered to these various men?—A. They were there with the appointments from the city council, and came as gatekeepers, inspectors, etc.

Q. And the oath was administered to you that morning at the city hall, you say?—A. Yes, sir.

Q. Then from there you went to the precinct?—A. Yes, sir.

Q. Did you have the election supplies?—A. Yes, sir.

Q. Where did you get them?—A. I think they were delivered there and I got them.

Q. Do you know who brought them there?—A. I do not; no, sir.

Q. Or to whom they were delivered there?—A. No, sir.

Q. You don't know where they got them from?—A. I know they were there with the seals intact.

Q. When you got there at the voting precinct?—A. Yes, sir.

Q. They had not been opened up?—A. No, sir.

Q. You testified that they elected you chairman when you were there?—A. As I remember, they did; yes, sir.

Q. The balance of those oaths were made out after you organized and went to voting, were they?—A. As I remember, the first thing we did was to organize; I had the list furnished me from the city clerk of the gatekeepers and clerks who were to serve on that election board; I think they were all sworn in at the same time.

Q. The oaths were not all made out then, were they? The balance of the oaths aside from your own, that was made out by the city clerk, was it not?—A. Yes, sir.

Q. Do you know who made out the balance of the oaths?—A. I do not; no, sir. I think some one of the clerks.

Q. One of your clerks?—A. Yes, sir.

Q. After they were made out they were signed?—A. Yes, sir.

Q. Did they make them out while the voting was going on?—A. I think so; yes, sir.

Q. As soon as you got through you opened up the voting and commenced making out those books, and they were made out during the day as far as they could make them?—A. Yes, sir; the poll book, the names were written in there during the day.

Q. Then, these names of the voters were written in as they progressed?—A. Yes, sir; and these clerks were all sworn, and inspectors, before the polls were opened.

Q. You gave them the oaths that are written here?—A. Yes, sir.

Q. That is the form you gave?—A. Yes, sir; and later they were signed there.

Q. Did you give these oaths to the two last ones, to the gatekeepers that appear there in this Exhibit 85?—A. Yes, sir.

Q. Read the first one and the one next to the last one.—A. (Reading.) "State of Michigan, County of Kalamazoo, ss. I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of gatekeeper of this election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Signed Joseph Palmer. Subscribed and sworn to before me this 5th day of November, A. D. 1912. Signed C. H. Little."

Q. The name to the jurat, is that your name?—A. Yes, sir.

Q. There is no official designation to it?—A. No, sir.

Q. Of course this oath was administered to the gatekeepers in the same form?—A. Yes, sir.

Q. Signed by whom?—A. C. H. Little—signed by L. D. Griffing.

Q. The jurat is signed by whom?—A. C. H. Little.

Q. No official designation to that?—A. No, sir.

Q. Is that all the oath and the only oath you administered to either one of those gatekeepers?—A. Yes, sir.

Q. Who were the other inspectors of election besides yourself?—A. Thomas M. Carroll, Mr. McQuigg, and Frank D. Stevens.

Q. There were four inspectors in all?—A. Yes, sir.

Q. Did you as inspectors give receipts for the election supplies?

Mr. ADAMS. Objected to as immaterial.

A. I couldn't say whether we did or not.

Q. You didn't sign any receipt, did you, for the supplies?—A. Not that I remember of.

ALVORD PECK, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Peck, did you act on the election board in the township of Alamo—did you have anything to do with helping conduct the election that was held in the Township of Alamo, Kalamazoo County, Michigan, on November 5, 1912?—A. I passed the ballots to the men.

Q. Did you hold any official position in the township of Alamo at that time?—A. Yes, sir; justice of the peace.

Q. How long had you been justice of the peace?—A. At that time about two years.

Q. Were you acting as justice of the peace on November 5, 1912?—A. Yes, sir; I was.

Q. Did you have any other justice of the peace in that township at that time?—A. Yes, sir.

Q. Who?—A. Rubert J. Fershon. I can't think of the other man's name.

Q. I notice that you administered the oath by Exhibit 74, that you administered the oath to Rubert J. Fershon and Edward W. Upton.—A. Yes, sir.

Q. F. H. Carpenter and Leslie Hutchins as inspectors of election that day, did you?—A. Yes, sir.

Q. And Henry Norton clerk of election there that day?—A. Yes, sir.

Q. Now, I notice that you did not sign to your signature there where you administered those oaths, in what capacity you administered them—in what capacity did you administer them to those gentlemen there that day?

Mr. MAYNARD. Objected to as incompetent and immaterial.

(No answer.)

Q. You say that Rubert J. Ferson was at that time a justice of the peace in that township?—A. Yes, sir.

Q. He served on that election board with you?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. Mr. Little, do you claim that you were a member of the board of election inspectors at that election held in Alamo, county of Kalamazoo, on the 5th day of November, 1912?—A. Yes, sir.

Q. Edward W. Upton acted as a member of the board?—A. Yes, sir.

Q. All day?—A. Yes, sir.

Q. Did you act all day?—A. Yes, sir; and nearly all night.

Q. What time did you get through?—A. I don't remember; I think about 1 o'clock.

Q. The next day, anyway?—A. Yes, sir.

Q. Now, did Mr. Carpenter act as inspector of election that day?—A. Yes, sir; I suppose so.

Q. That is his name down there? Can you tell whether he acted or not?—A. Yes, sir; he acted.

Q. That made three?—A. Yes, sir.

Q. Mr. Leslie Hutchins?—A. He was clerk.

Q. Did he take the oath of inspector of election that day?—A. He took the oath as clerk; they were all taken at the same time.

Q. They were all taken as inspectors?—A. Yes, sir.

Q. Mr. Norton, what was he?—A. As clerk.

Q. He took the oath as clerk of the election?—A. Yes, sir.

Q. On the last page after the blank oaths there appear to be two oaths, the forms of those oaths I wish you would read; the first one that is on that page.—A. (Reading.) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of gatekeeper of election held on Tuesday, the 5th day of November, A. D. 1912. Signed, C. R. Campbell."

Q. Who signed the jurat?—A. A. Peck.

Q. Any official designation there?—A. No, sir; there doesn't seem to be.

Q. Is that the only oath you administered to Mr. Campbell that day?—A. I believe it was.

Q. The next oath following was what?—A. (Reading:) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of gatekeeper of election held on Tuesday the fifth day of November A. D. 1912. A. Peck."

Q. That is your signature?—A. Yes, sir.

Q. Who did you swear to that before, who administered the oath to you?—A. Rubert J. Fershon.

Q. Did you act as gatekeeper or inspector of election?—A. Inspector I was.

Q. There you signed as gatekeeper?—A. I seemed to have; yes, sir.

Q. If you performed the duties of both you did pretty well?—A. Yes, sir; I didn't do both.

Redirect examination by Mr. ADAMS:

Q. You acted as inspector?—A. Yes, sir.

Q. Who was gatekeeper there that day?—A. George Campbell, and I can't tell who the other one was; it is a good while ago.

Q. You don't remember then?—A. No, sir.

Q. You didn't sign as inspector there that day, Mr. Peck—A. Maybe I was gatekeeper.

Q. I will call your attention to this same Exhibit 74 to the final certificate; one that is signed, is it not, by Edward W. Upham and Mr. Fershon, Mr. Carpenter, Mr. Hutchins, board of election inspectors, held at Alamo on Tuesday, the fifth day of November, A. D. 1912?—A. Yes, sir.

Q. That is the way it reads on the books?—A. Yes, sir.

Q. So you didn't sign as inspector?—A. I don't think I did now; I supposed I did.

Q. The jurat to the oath is as gatekeeper?—A. All right, then.

Q. Does that refresh your recollection whether you acted as gatekeeper?—A. I don't remember.

Q. Now, as a matter of fact, you did not act handing out the ballots that day, you attended the gate, didn't you?—A. I guess so.

Q. That is your recollection now that you did not hand out the ballots at that particular election?

Mr. MAYNARD. Objected to as leading; in the first place, he said he handed out every ballot voted there that day.

Q. Have you acted on other election boards before this time?—A. Yes; for the last 12 or 15 years.

Q. Your best recollection is now at this November 5, 1912, election you acted as what?—A. As gatekeeper.

Q. As gatekeeper you didn't pass out any ballots at all there?—A. No, sir; not at all.

WALTER J. YATES, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant, as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Yates, where do you live?—A. At Vicksburg.

Q. Is Vicksburg in the township of Brady, Kalamazoo County?—A. Part of it.

Q. How many voting precincts do you have in the town of Brady, or did you on November 5, 1912, when the general election was held?—A. We had two.

Q. Did you hold any official position in the township of Brady November 5, 1912?—A. I did; I was treasurer of the township.

Q. Do you know W. H. Beebe?—A. Yes, sir.

Q. Did he hold any official position in that township?—A. Yes, sir; he did then; he was justice of the peace.

Q. Did you know A. W. Parker at that time?—A. Yes, sir.

Q. Did he hold any official position in the township of Brady at that time?—A. Yes, sir; justice of the peace.

Q. Now, did you act on the election board of the second precinct in Brady at the November 5, 1912, general election?—A. Yes, sir.

Q. In what capacity did you act there?—A. As chairman of the election board.

Q. As inspector?—A. Yes, sir; as chairman and as inspector.

Q. Did you take any oath before you proceeded to perform your duties on that election board?—A. Yes, sir.

Q. Before whom?—A. W. H. Beebe, I am pretty sure, administered the oath, as he was the oldest justice of the peace.

Q. Can you say positively that you took an oath there?—A. I certainly did.

Q. You think you took it before W. H. Beebe as justice of the peace?—A. Yes, sir.

Q. I notice here on Exhibit 86; will you state what that is?—A. It is the poll book of the general election of November 5, 1912, second precinct, township of Brady, Kalamazoo County, Michigan.

Q. Is that one of the books that was used there by your election board that day?—A. Yes, sir.

Q. Now, on the first page, where the oaths of the different officers appear, I notice that the first oath is the oath of inspector, and it is signed by W. J. Yates?—A. Yes, sir.

Q. Is that your signature?—A. Yes, sir.

Q. Now, that jurat does not seem to be signed by anybody, does it?—A. No, sir; it is not signed.

Q. You say you did take an oath before W. H. Beebe?—A. Yes, sir.

Q. Before you proceeded to perform the duties there as inspector of that election did you take that oath?—A. It was before.

Q. The first oath that was administered to you by W. H. Beebe was the first oath administered there that day?—A. Yes, sir.

Q. I notice the second oath is the oath of an inspector of election and is signed by A. W. Parker, and the second oath is the oath of inspector and is signed by W. H. Beebe, and the next oath signed is the oath of clerk of the election, signed by R. R. Irwin?—A. Yes, sir.

Q. The next oath is oath of clerk, signed by George Goldsmith, on that exhibit?—A. Yes, sir.

Q. Turn over the page, and the next oath that is signed is that of gate keeper, signed by Lewis Riggles? And the next oath is signed by the other gatekeeper, George H. Huntington?—A. Yes, sir.

Q. The jurats to all those oaths except the one you signed, or the oath that you signed—those jurats are signed by W. J. Yates?—A. Yes, sir.

Q. Whose signature is that?—A. That is my own.

Q. That is your signature?—A. Yes, sir.

Q. I notice under your signature to those jurats there is no official designation?—A. No, sir.

Q. In what capacity did you administer those oaths to those several gentlemen there?

Mr. MAYNARD: Objected to as immaterial.

A. As chairman of the board.

Q. What board?—A. Board of election.

Q. Inspectors?—A. Yes, sir.

Q. When did you administer those oaths to those people, all of them?—A. Before the opening of the polls.

Q. Before those gentlemen had performed any duties on that board?—A. Yes, sir; before any duties were performed.

Cross-examination by Mr. MAYNARD:

Q. What official position do you hold in the township?—A. Township treasurer.

Q. You were township treasurer?—A. Yes, sir.

Q. Now, what was done there first that morning when your board organized?—A. What was done first?

Q. Yes.—A. Well, I think the first thing was I was sworn in as inspector of election by the justice of the peace.

Q. Was that the first thing done?—A. Yes, sir.

Q. Did you sign that oath yourself?—A. Yes, sir.

Q. Did he read this particular oath to you in this book as you signed it?—A. Yes, sir; he read it from memory; I will not say he read it; he administered the oath as an inspector of election.

Q. Did you take this oath or some other?—A. I took an oath to support the Constitution of the United States and perform the duties required of me to the best of my ability; I remember that part of it; whether word for word like that I don't know; I presume it was that.

Q. That oath is not signed by you at all?—A. That is my signature there.

Q. I mean at the conclusion of the oath. That is not at the conclusion of the oath, is it?—A. It is one line above.

Q. You didn't sign this language at all, did you, "according to the best of my ability, so help me God"; you never signed that?—A. The way it appears there I did not.

Q. Your name is on the line above?—A. Yes, sir.

Q. According to this oath no officer signed that jurat, did they?—A. No, sir.

Q. No one administered any oath to the gatekeepers at that election? The oaths you administered to the gatekeepers appear on that page of this Exhibit 86?—A. Yes, sir.

Q. Will you read the first oath?—A. (Reading.) "I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of gatekeeper at the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Signed Lewis Riggles. Subscribed and sworn to before me this 5th day of November, A. D. 1912. W. J. Yates."

Q. There is no official designation to your name?—A. No, sir.

Q. The next oath is in the same form?—A. The same form, only signed by George Huntington as gatekeeper and by myself in the same form.

Q. That is, you signed the jurat?—A. Yes, sir.

Q. No other oath was administered to those gatekeepers that you know of there that day except this one?—A. No, sir.

H. B. SWEETLAND, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows on behalf of the contestant:

Direct examination by Mr. ADAMS:

Q. Mr. Sweetland, you live where?—A. In the township of Portage.

Q. Where did you live November 5, 1912?—A. Portage.

Q. How long have you lived in Portage?—A. All my life.

Q. Did you hold any official position in the township of Portage on the 5th day of November, 1912?—A. Yes, sir.

Q. What?—A. Justice of the peace.

Q. Was Mr. F. J. Southwell a member of the board of inspectors of that election November 5, 1912?—A. Yes, sir.

Q. Did he hold any official position in that township?—A. Yes, sir; he was township clerk.

Q. Now, I show you Exhibit 87; will you look at that and tell me what it is?—A. That is the poll book of Brady Township of the November election.

Q. November 5, 1912?—A. Yes, sir.

Q. I notice your name appears there to the jurats or some of them in that poll book, at least the signature of H. B. Sweetland. State whether that is your signature.—A. Yes, sir.

Q. Where it appears?—A. Yes, sir.

Q. The first oath there in that Exhibit 87 is the oath of inspector signed by Alf L. Snow?—A. Yes, sir.

Q. You signed the jurat under his oath, H. B. Sweetland, didn't you?—A. Yes, sir.

Q. I see your signature is under the oath of N. L. Bowles?—A. Yes, sir.

Q. He was sworn as an inspector, is that right?—A. Yes, sir.

Q. Then the next certificate is the certificate of the inspector of election signed by Mr. Southwell?—A. Yes, sir.

Q. That next one is that of inspector signed by W. E. Agnew?—A. Yes, sir.

Q. The next is the certificate of Peter who?—A. Prosens.

Q. Your name is to the jurat?—A. Yes, sir.

Q. The next is Isaac Root?—A. Yes, sir.

Q. Your name is under the jurat that is connected with the oath of Isaac Root?—A. Yes, sir.

Q. I notice where you have signed these jurats you have not designated in that Exhibit 87 in what capacity you administered the oaths. State in what capacity you did administer those oaths to those several gentlemen.

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. As justice of the peace.

Q. I notice you took the oath before F. H. Southwell?—A. Yes, sir; F. J. Southwell.

Q. He was what officer in that township at the time he administered that oath to you?—A. He was township clerk.

N. B. WHEELER, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. You testified in this matter on a former occasion, didn't you?—A. Yes, sir.

Q. You were inspector, I believe, in the third precinct in the first ward of the city of Kalamazoo at the November 5, 1912, general election?—A. Yes, sir.

Q. Did you take an oath to act as inspector of that election before you acted as such inspector?—A. I took an oath the night before at the city hall to act as chairman.

Q. I show you Exhibit 88 to refresh your recollection, and call your attention to the first certificate in that book?—What is that book, first?—A. It is the poll book of the general election held on Tuesday, the 5th day of November, 1912, in the third precinct, first ward of the city of Kalamazoo, county of Kalamazoo, State of Michigan.

Q. Is that a book you gentlemen made up there that day, you men who constituted that election board, some of you?—A. Yes, sir.

- Q. The first certificate in there is oath of inspector?—A. Yes, sir.
- Q. Signed by whom?—A. Clarence L. Miller, city clerk.
- Q. And under that?—A. N. B. Wheeler.
- Q. Who is that?—A. That is myself.
- Q. That is your signature?—A. Yes, sir.
- Q. The oath, according to the jurat, is signed by whom?—A. Clarence L. Miller, city clerk.
- Q. The date on that jurat is November 5, 1912?—A. Yes, sir.
- Q. Does that refresh your recollection as to the date you took the oath?—A. I took two oaths; I took one the night before.
- Q. You were sworn to act as inspector at that election by whom?—A. By the city clerk, Clarence L. Miller.
- Q. I notice there is a certificate there of—A. R. A. Trepanning.
- Q. As inspector?—A. Yes, sir.
- Q. Who is the next?—A. William C. Lewis.
- Q. Mr. Hogan was an inspector?—A. Yes, sir.
- Q. Albert W. Cooley as clerk of election?—A. Yes, sir.
- Q. Guy H. Lockwood, as clerk of election?—A. Yes, sir; and Otis N. Connor as inspector.
- Q. John A. Lamb as gatekeeper?—A. Yes, sir.
- Q. Who is next?—A. M. Ryan as gatekeeper.
- Q. Each one of these certificates are signed by those gentlemen, respectively, and whose name is that appears under the jurat under their oaths?—A. N. B. Wheeler.
- Q. Whose signature is that?—A. That is my signature.
- Q. You signed that there?—A. Yes, sir.
- Q. Did you administer the oaths to those gentlemen?—A. I did; yes, sir.
- Q. In what capacity did you administer the oaths to them?
- Mr. MAYNARD. Objected to as incompetent and immaterial.
- A. As chairman of the board.
- Q. What board?—A. The board of election inspectors.
- Q. Did you administer those oaths after you had taken the oath before the city clerk?—A. I administered the oaths before we opened in the morning.
- Q. Had you taken, before you administered the oaths to those gentleman, the oath before the city clerk?—A. I took the oath the previous evening at the city hall.

Cross-examination by Mr. MAYNARD:

- Q. Witness, when you got the supplies for your election precinct, when did you get them?—A. When we got there the election supplies were at the polls, at the engine house.
- Q. And among the supplies was this poll book and statement book and so on?—A. Yes, sir.
- Q. Were they all sealed up?—A. Yes, sir; they were sealed.
- Q. You took and signed this oath, did you not, the night before election?—A. No, sir.
- Q. You took it that day?—A. I signed it that morning.
- Q. Who made out the blank oaths for the other inspectors to sign?—A. One of the clerks.
- Q. Of your board?—A. Yes, sir.
- Q. Look at those oaths, all of those oaths, and see if they are not drawn up and made out by the city clerk and all in the same handwriting?—A. No, sir; I don't think the city clerk filled those out.
- Q. Who do you think filled them out?—A. I think either Mr. Lockwood did or Mr. Trepanning.
- Q. They were clerks of the election board?—A. Yes, sir.
- Q. You think they made them out?—A. Yes, sir.
- Q. When they were made out, you swore the officers to them and you signed them and they signed them?—A. Yes, sir.
- Q. That is your recollection of how it happened?—A. I swore them all at one time before the polls were opened.
- Q. You didn't sign them there?—A. No, sir.
- Q. When did you take the oath?—A. When I came around in the morning for the polls to open.
- Q. After you had been to work awhile?—A. Well, I think right at the time the polls opened.

Q. Did you administer the only oath that was administered to the gatekeepers?—A. Yes, sir.

Q. That oath is the only one you administered, is it not?—A. I administered all of them except the first one.

Q. Did you administer an oath to the gatekeepers and swear them to allow no person to pass into the gate into that polling place, did you administer any such an oath?—A. I did not; no, sir.

Q. Who did the tallying at that precinct?—A. Why, the clerks.

Q. Who were the clerks?—A. Guy H. Lockwood, Roy Trepanning, Mr. Corwin, and Mr. Cooley.

Q. How many clerks did you have?—A. We had four clerks, I think.

Q. How many inspectors did you have?—A. I think there were two inspectors.

Q. Well, you would be one?—A. Yes, sir.

Q. Trepanning would be another?—A. Yes, sir; I had it in mind he was a clerk, probably he was not.

Q. Did you administer an oath to him as inspector?—A. According to the list received from the city clerk, whatever he was.

Q. The city clerk handed you a list?—A. The city clerk; I obtained a list from him.

Q. When?—A. The night previous to election day.

Q. There was no one elected there by the bystanders for this election, was there?—A. Not that I recollect; no, sir.

Q. Have you served at other meetings of the board of election?—A. Yes, sir.

Q. Guy H. Lockwood was a candidate for office on the ticket that day?—A. Yes, sir.

Q. What office?—A. He was a candidate on the Socialist ticket, I don't know for what, I forget.

Q. He served on the board while a candidate for office at that election?—A. Yes, sir.

Q. Did you give a receipt for the supplies?

Mr. ADAMS. I object to that as irrelevant and immaterial.

A. I don't think I did; I am quite sure I did not.

Q. Was there a citizen there who did not belong to your board by the name of Monroe who was a challenger?—A. Yes, sir.

Q. What party was he from?—A. The Progressives.

Q. When you counted up the ballots at night, did he help do the counting?—A. It was stated to me, addressed to me as chairman, and I was asked if he could help, and I told him I thought we could get along, we had so many on the board, without his assistance. He may have helped to straighten out the ballots. I wouldn't say.

Q. He handled them some?—A. He may have, yes, sir; I couldn't say that I remember of seeing him; I was there all the time.

Redirect examination by Mr. ADAMS:

Q. Did you say Mr. Lockwood was running on the ticket?—A. His name was on the Socialist Party.

Mr. ADAMS. I move to strike out the question and answer that Guy H. Lockwood was on the ticket that day as a candidate and the answer that the witness made thereto for the reason that it is irrelevant and immaterial and not covered by any allegation in the answer of the contestee.

Q. I show you Exhibit 89 and ask you if you will look over that exhibit to refresh your recollection and tell what office Guy H. Lockwood was running for on that ticket that day.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, there being no allegation contained in the answer of the contestee that would make any such proof admissible if otherwise admissible of itself, and there is no proof that the piece of paper he hands the witness is anything whatsoever any more than an ordinary piece of paper on which there may be some writing or printing.

A. I see he was a candidate for State senator from the sixth district on the Socialist ticket.

FRANK FLAITSZ, being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Flaitz, you live in the city of Kalamazoo?—A. Yes, sir.

Q. I show you a book marked "Exhibit 90"; do you know what that is?—A. That is the poll book of the election in the 6th precinct on the 5th day of November, 1912.

Q. Did you have anything to do with the carrying on of the election in the sixth precinct of the city of Kalamazoo November 5, 1912?—A. Yes, sir; I was an inspector there.

Q. State whether you took an oath to act as inspector of that election.—A. I did; I went to the city clerk, I think the day before or Saturday, I can't say which now, but I was sworn in and signed.

Q. Before whom did you take the oath?—A. The city clerk.

Q. What was his name?—A. Clarence Miller.

Q. Clarence L. Miller?—A. Yes, sir.

Q. Now, I notice there is C. H. Ashby and J. D. Schell and another gentleman by the name of W. A. Balch, each signed the oaths contained in this exhibit as inspectors of that election, didn't they?—A. Yes, sir.

Q. And you signed the jurat under the oath of J. D. Schell and W. A. Balch?—A. Yes, sir.

Q. Were they signed there?—A. Yes, sir.

Q. After your signature there in those jurats you do not seem to have designated in what capacity you administered the oaths. In what capacity did you administer those oaths to those men?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. As chairman of the board of inspectors, or board of election.

Q. I note there is no signature under the jurat which is under the oath of C. H. Ashby. Do you know who, if anybody, administered any oath to him that day?—A. I know I administered the oath to all except myself, in a body; that is, the clerks and inspectors in a body and the gatekeepers by themselves.

Q. Is it your recollection that you administered the oath to C. H. Ashby to act as inspector of that election that day?—A. To the best of my memory, yes, sir.

Q. I notice there is a certificate here signed by E. H. Fisher who seems to have taken the oath as clerk and by William J. Losinger described in the oath as clerk. Who is that, John Jaeger?—A. Yes.

Q. Subscribed to that oath as gatekeeper?—A. Yes.

Q. Who is the next fellow?—A. I know him by sight, but I can't think of his name; I have it here now, Fleckenstein.

Q. L. Fleckenstein as gatekeeper?—A. Yes, sir.

Q. And O. W. Brundage, what was his office?—A. He acted as inspector.

Q. Now then your name appears in the jurat?—A. Yes, sir.

Q. As the person who administered the oaths, and there is no official designation under those jurats?—A. No, sir.

Q. In what official position did you administer those oaths?—A. As chairman of the board.

Q. Chairman of the board of inspectors?—A. Yes, sir.

Q. Chairman of the board of election?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. You think that you went to the city hall the day before election?—A. I know I did; whenever I am elected as chairman I go the day before and am sworn in so there would be no chance of waiting for the city clerk in the morning.

Q. This is the sixth precinct?—A. Yes, sir.

Q. Read it.—A. (Reading:) "Oath of inspector of election. State of Michigan, County of Kalamazoo, ss. I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of inspector of the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God."

Q. Who was that signed by?—A. Clarence L. Miller. No, the oath is signed by myself, Frank Flaitz.

Q. The jurat is signed by whom?—A. Clarence L. Miller, city clerk.

Q. That was done the day before?—A. That was done before.

Q. Do you know what oath you took before the city clerk at the city hall?—
A. A duplicate of this, but I wouldn't say that it is identical word for word to this oath.

Q. You don't know what oath you did take?—A. To the best of my knowledge that is it.

Q. These other oaths that are signed by yourself are signed by you as inspector, as chairman of the board of election inspectors?—A. Yes, sir.

Q. That is the capacity you claim to have acted in?—A. Yes, sir.

Q. Your name is Frank Flaitz?—A. Yes, sir.

Q. These oaths to the gatekeepers, are these the oaths you administered to the gatekeepers?—A. Yes, sir; to the best of my knowledge. I administered the oaths before the polls opened, from memory.

Q. That oath that you administered from memory, did you administer any such thing to anyone of the gatekeepers?—A. I swore the gatekeepers.

Q. Did you use this language in those oaths: "You will allow no person to pass through the gate or railing except voters?"—A. No, sir; I did not.

Q. That kind of an oath was not administered to either of the gatekeepers?—A. Not those exact words; no, sir.

Mr. ADAMS. I object to that as a conclusion of the witness.

Q. You don't claim, do you, that you administered any oath to those gatekeepers that they would not allow anyone within the railing?—A. The oath that I administered to them was that they would discharge the duties of gatekeepers at this election.

Q. You said you administered these oaths as chairman of the election board. Now how do you claim that you were elected chairman of the board?—
A. I couldn't say positively just whether the board elected me there, elected me chairman or whether I acted as chairman from the council. The council appoints the chairman as a usual thing.

Q. You don't know how you did come to be chairman?—A. Well, I wouldn't say; I am not positive, no, sir, whether the board elected me chairman or whether the council had made me chairman.

Q. You have no recollection that they took any action there that morning?—A. No, sir.

ERNEST WISE, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestants as follows:

Direct examination by Mr. ADAMS:

Q. You testified on a former hearing, didn't you?—A. Yes, sir.

Q. You, I believe, testified that you were one of the inspectors at the November 5, 1912, election in the fifteenth precinct in the city of Kalamazoo?—A. Yes, sir.

Q. Now, I call your attention to the poll book used by your election board there, Exhibit 91. Before whom, according to this Exhibit 91, did you take the oath to act as inspector of that election?—A. Clarence L. Miller, city clerk.

Q. I notice that all the inspectors of election and the clerks of the election and the gate keepers of that election in that precinct were sworn before Ernest Wise; what Ernest Wise was that?—A. Myself.

Q. The book shows that to be true, does it?—A. Yes, sir.

Q. Earl Lovett signed as an inspector; Richard H. Elwell and C. H. Gill signed as inspectors?—A. Yes, sir.

Q. Roy Gardner signed as clerk?—A. Yes, sir.

Q. And C. H. Kimball as clerk?—A. Yes, sir.

Q. Who is the next fellow?—A. Jay Van Werder, as clerk.

Q. And Russell Thayer signed as clerk?—A. Yes, sir.

Q. And J. L. Ward as gate keeper?—A. Yes, sir.

Q. And J. Enshrine, I guess it is, signed as gate keeper?—A. Yes, sir.

Q. They signed those respective oaths to those respective offices?—A. Yes, sir.

Q. Then you signed the jurat under them, each one of them, didn't you?—A. Yes, sir.

Q. But you didn't put any official designation under your signature?—A. No, sir.

Q. In what capacity did you administer those oaths to those several gentlemen there?—A. As chairman of the board of election.

Q. Had you or not taken the oath before the city clerk to act as inspector of that election before you administered the oath to any of those other gentlemen?—A. I had taken it before.

Q. When did you administer the oaths to those gentlemen?—A. Before we opened the polls, at 7 o'clock.

Q. On what day?—A. On the 5th day of November, 1912.

Cross-examination by Mr. MAYNARD:

Q. You say you signed those jurats and administered those oaths in the capacity of chairman of the board of election inspectors for this precinct?—A. Yes, sir.

Q. Do you claim to have administered those oaths in any other capacity than chairman?—A. No, sir; only as chairman.

Q. How were you chairman?—A. By being an alderman I was chairman.

Q. That is all the way you claim to be chairman, because you were alderman of that ward?—A. Yes, sir.

Q. What ward was your precinct in?—A. The fifth ward.

Q. Because you were alderman of that ward you assumed to act as chairman of that board?—A. Yes, sir.

Q. Were you the senior alderman?—A. Yes, sir.

Q. As senior alderman, you assumed to act as chairman and so administered those oaths in that capacity?—A. Yes, sir.

Q. You did not put under your name, "Chairman of the board of election inspectors"?—A. I did not.

Q. Had you been going to designate your official capacity, that is the way you would have done it?—A. Yes, sir; if I had thought it was necessary, I would have done it.

Q. Those oaths signed by yourself, J. S. Ward, and others, were the oaths administered to them as gate keepers?—A. Yes, sir.

Q. That is, you swore them that they would support the Constitution of the United States and the constitution of this State, and that they would faithfully discharge the duties of the office of gate keepers?—A. Yes, sir.

Q. That is the oath you administered?—A. That is the oath I administered; yes, sir.

Q. There was no oath administered to them, or either of them, that they would not permit any person except voters to pass through the inside railing except a voter or some one to assist a voter in preparing his ballot?—A. No, sir; nothing of that nature. Just the regular oath that is in the book.

ROLAND FAIRCHILDS, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Fairchilds, you live in Kalamazoo?—A. Yes, sir.

Q. You have lived here how long?—A. I was born here.

Q. How long ago?—A. Thirty-seven years ago.

Q. Did you act on the election board in the city of Kalamazoo at the November 5, 1912, election?—A. Yes, sir.

Q. What ward?—A. The fourteenth precinct.

Q. In the city of Kalamazoo?—A. Yes, sir.

Q. I show you Exhibit 92; what is it?—A. The poll book of the general election held on Tuesday, the 5th day of November, 1912. It isn't filled out on the cover.

Q. What precinct?—A. It does not tell.

Q. Can you tell by referring to it?—A. Yes, sir; the fourteenth precinct.

Q. Is that, or not, the poll book your board of election used there on that day at that election?—A. Yes, sir; it is.

Q. I notice the first certificate in there, or oath, is signed by one R. J. Fairchilds; whose signature is that?—A. That is my signature.

Q. It appears by that that you took the oath of inspector at that election?—A. Yes, sir.

Q. Before Clarence L. Miller, city clerk?—A. Yes, sir.

Q. According to the way it appears on this book?—A. Yes, sir.

Q. Did you take that oath the day before, before him?—A. The day before; yes, sir.

Q. That is, you mean on the 4th of November, 1912?—A. Yes, sir.

Q. Now, I notice that Herbert E. Congdon signed the oath of inspector and H. L. Schroeder another oath, and H. M. Collins as inspector, and William C. Fikes as clerk of election, and George C. Thayer as clerk of election, and W. M. Wing signed it as gatekeeper, and C. E. Slack signed the oath as gatekeeper,

and Henry A. Davis signed the oath as inspector; now there are no names in the jurats to those oaths signed by yourself?—A. No, sir.

Q. Do you know whether they took those oaths to act at that election that day?—A. Yes, sir.

Q. Before whom?—A. Before me.

Q. Did you administer the oaths to the gentlemen whose names I have read?—A. Yes, sir.

Q. When?—A. About 20 minutes before 7 o'clock.

Q. Had you performed any duties on the election board up to the time you administered the oaths?—A. We appointed the chairman.

Q. Who was the chairman?—A. I was the chairman.

Q. What capacity did you administer the oaths to those several gentlemen?—A. As chairman of the election board.

(It was admitted upon the record that Clarence L. Miller was city clerk of the city of Kalamazoo on the 5th day of November, 1912, and had been for some time before that.)

Cross-examination by Mr. MAYNARD:

Q. Did you swear them all together when you administered the oaths?—A. Yes, sir.

Q. All in the same oath?—A. They repeated "I do solemnly swear that I will support the Constitution of the United States." substantially in the form for the different positions, each one repeating what he was; for instance, one said he was inspector, another was clerk and another was gatekeeper.

Q. That is all the oaths you administered to the gatekeepers?—A. Yes, sir.

Q. You didn't mention in oath to them that they would not allow any person admitted unless they were a voter or some one to assist a voter?—A. Not in the oath; no, sir.

Q. That never was made use of in any oath?—A. No, sir.

Q. What part did you perform as chairman of the board?—A. I looked up the names and handed out the ballots.

Q. Were any ballots handed out to a voter that the voter asked for assistance in marking his ballot?—A. There was no one did any marking of the ballots for anybody.

Q. Did anybody go in the booths with anyone?—A. I don't know; I think Mr. Congden and Mr. Schroeder stepped to the door when a man wanted to ask a question.

Q. Was there any oath administered to them?—A. No, sir.

Q. Neither of them?—A. No, sir.

Q. Do you know of any authority you claimed to have in administering the oath except as chairman of the board?—A. I was sworn in by Clarence L. Miller and appointed chairman of the board.

Q. You were not sworn in to act at the time you were appointed?—A. No, sir.

Q. Did these other men hold any official positions in the city when they appeared there at that time?—A. They were appointed by the city council.

Q. How do you know that?—A. I had a list from the city clerk.

Q. Who gave it to you?—A. The city clerk.

Q. Just simply a list of the names?—A. Yes, sir.

Q. That is all you knew about it?—A. Yes, sir.

Q. Just a list of the names?—A. Yes, sir.

Q. When you were elected chairman that morning you proceeded to administer the oaths to the others?—A. By the authority I had from the city clerk I administered the oaths.

Q. He didn't appoint you as chairman, did he?—A. No, sir; he did not, but he gave me authority to administer the oaths because he could not get around to all the places.

Q. How did he give you authority?

A. I don't know where he got it from but he gave it to me; that is all I know.

Q. By written authority?—A. No, sir; he wrote in the notice to appear that I was appointed on the election board and to appear before him.

Mr. MAYNARD. I object to that as not the best evidence and ask that the answer be stricken out.

By Mr. ADAMS:

Q. You were inspector and had been sworn in as inspector when you administered the oaths to these others?—A. Yes, sir.

RICHARD EARLY, being first sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. You live in Kalamazoo?—A. Yes, sir.

Q. You have lived here for several years continuously, have you not?—

A. About thirty years.

Q. Were you a member of the election board November 5, 1912, of the general election in the city of Kalamazoo?—A. Yes, sir, I was.

Q. What one?—A. Inspector.

Q. What precinct?—A. The fifth precinct.

Q. Did you take an oath to act as inspector or otherwise at that election at any time?—A. Yes, sir.

Q. Before whom?—A. Before the city clerk, Clarence L. Miller.

Q. I show you Exhibit 93. What is it?—A. It is the poll book of the general election of the fifth precinct, held on Tuesday, the 5th day of November, 1912.

Q. I call your attention to the first oath that appears in that exhibit. Will you please read it from that book?—A. (Reading:) "State of Michigan, County of Kalamazoo, ss. I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of inspector of election held on Tuesday, the 5th day of November, 1912, according to the best of my ability. So help me God. Richard Early. Subscribed and sworn to before me this 5th day of November, A. D. 1912. Clarence L. Miller, city clerk."

Q. Did you take that oath before Clarence L. Miller, city clerk?—A. Yes, sir.

Q. I notice a certificate signed by John W. Rose as inspector of election, and one signed by Hiram Bogard as inspector, and one by R. H. Buckhout and one by M. J. McHugh as clerk, and J. R. Hedden as clerk of election, and Charles Robins as clerk of election, and by G. H. Laporte as gatekeeper, and by Harmon Schering as gatekeeper of election?—A. Yes, sir.

Q. Is that correct on this exhibit?—A. Yes, sir.

Q. Your name appears under the jurat of each one of those oaths except the one that you took before the city clerk?—A. Yes, sir.

Q. Is that correct?—A. Yes, sir.

Q. Richard Early?—A. Yes, sir.

Q. Those are your signatures?—A. Yes, sir.

Q. Under your signature to those oaths to the several inspectors, clerks, and gatekeepers, there is no designation as to what capacity you administered the oaths. Will you state in what capacity you administered the oaths to those gentlemen?—A. As chairman of the board of election.

Q. When you administered those oaths had you before that taken the oath before the city clerk to act as inspector of that election?—A. Yes, sir.

Q. When did you administer these oaths to those several gentlemen?—A. Just previous to opening the polls.

Q. On what day?—A. November 5, 1912.

Cross-examination by Mr. MAYNARD.

Q. Did you have them all sworn at the same time?—A. I did.

Q. You administered the oaths that are in this book?—A. Yes, sir.

Q. Then you administered to the gatekeepers there the oaths that are here signed?—A. Yes, sir.

Q. Did you swear the gatekeepers not to allow any person to pass through the gates or inside of the railing except to vote or to assist some elector in the preparation of his ballot? Did you administer any such oath as that?—A. I did not.

Q. There was none that you know of?—A. No, sir; I did not, but they were sworn in to do their duty as gatekeepers on that board of election.

Q. The same as this oath here?—A. Yes, sir.

Q. To perform the duties of gatekeepers, "to the best of your ability. so help you God?"—A. Yes, sir.

Q. You swore them to that oath?—A. Yes, sir.

Q. As it appears in Exhibit 92?—A. Yes, sir.

Q. Did you read that jurat to the first gatekeeper; have I read it since you have been on the witness stand? Did you read it out aloud?—A. At the time they were sworn?

Mr. MAYNARD. Is it admitted that the oaths to the gatekeepers were all in the same form as the oaths that counsel has had the witness read to-day?

Mr. ADAMS. Yes; but I move to strike out all the testimony as to any other form of oath than that from which they have had to read from as being incompetent, in the several exhibits that have been offered in evidence and as irrelevant, incompetent and immaterial, and not covered by any allegation in the contestee's answer.

W. C. HIPPI, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. You live in Kalamazoo?—A. Yes, sir.

Q. And have for several years?—A. Yes, sir.

Q. Were you a member of the election board in the city of Kalamazoo November 5, 1912, general election?—A. Yes, sir; I was.

Q. What board were you on?—A. In the first precinct of the first ward.

Q. Do you know a man named Irving M. Stimson?—A. Yes, sir.

Q. State whether he was a member of that same election board?—A. Yes, sir.

Q. In what capacity did he act that day?—A. Chairman of the board.

Q. Was he an inspector?—A. Yes, sir; he was.

Q. I show you Exhibit 94, this is the poll book, is it not, of the general election held November 5, 1912, precinct No. 1, city of Kalamazoo?—A. Yes, sir.

Q. That is the precinct in which you acted?—A. Yes, sir.

Q. Will you tell us whether that first oath or certificate that you find there on that book is, and read it?—A. (Reading.) "State of Michigan, County of Kalamazoo, ss. I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Signed, Irving M. Stimson. Subscribed and sworn to before me this 5th day of November, A. D. 1912. Signed Clarence L. Miller, city clerk."

Q. Now, then, I notice that John S. Rockwell took the oath of inspector of election, or signed the oath, rather, and Mr. Frisbee signed the oath as inspector, and L. W. Mapes and W. C. Hipp; is that your signature?—A. Yes, sir.

Q. Samuel B. Myers signed the oath as clerk of election?—A. Yes, sir.

Q. And John McCarthey as clerk of election?—A. Yes, sir.

Q. And Henry R. Campbell signed it as gatekeeper?—A. Yes, sir.

Q. And S. G. Chilson signed it as gatekeeper?—A. Yes, sir.

Q. That is true, according to the exhibit in your hands?—A. Yes, sir.

Q. Exhibit 94?—A. Yes, sir.

Q. Do you know whether any oath was administered to you gentlemen there, or to your inspectors and clerks and gatekeepers whose names I have read out of the Exhibit 94?—A. I think there was, by Mr. Stimson.

Q. When did you administer the oaths to the other members of the election board?—A. I should judge about 20 minutes to 7 o'clock, or something like that.

Q. Before any work had been done by the board or after work had been done?—A. Before any work had been done, practically, by the board.

Q. Do you know whether Mr. Stimson was sworn in before you were?—A. He was sworn in before.

Q. I notice that none of these jurats are signed here except the one that appears under the certificate of the oath of Mr. Stimson, in Exhibit 94. Is that correct?—A. Yes, sir.

JESSE WILKINS, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Wilkins, you reside in the city?—A. Yes, sir.

Q. Your name is Jesse Wilkins?—A. Yes, sir.

Q. Were you living in Kalamazoo on November 5, 1912?—A. Yes, sir.

Q. Did you act on the election board in the city of Kalamazoo at the general election held Tuesday, November 5, 1912?—A. Yes, sir; second precinct.

Q. In the second ward?—A. The first ward.

Q. Did you take an oath to act as inspector or an officer on that election board in that precinct on that day?—A. I took an oath to act as chairman of the board.

Q. Before whom?—A. Clarence L. Miller, city clerk.

Q. When did you take that oath?—A. It was either the night before or that morning of the election; I will not say which now.

Q. Did William O'Bryne act as inspector of that election?—A. Yes, sir.

Q. I show you Exhibit 95; state whether that is the poll book you gentlemen used there that day in that precinct.—A. Yes, sir.

Q. I notice that Will O'Bryne signed an oath as inspector and G. F. Mahoney, F. A. Newall, and E. R. Peel signed oaths as clerks, and L. Kile acted as clerk, and George E. Kelly signed an oath as inspector and Samuel Flint signed an oath as gatekeeper, and John Hansen acted as gatekeeper; is that correct?—A. Yes, sir.

Q. As shown by that exhibit?—A. Yes, sir.

Q. I notice that the name of Jesse Wilkins appears there to the jurats to those names I have just read.—A. Yes, sir.

Q. Is that your signature?—A. Yes, sir.

Q. In what capacity did you administer the oaths to those several gentlemen there?—A. As chairman of the election board.

Q. You administered the oaths, did you?—A. Yes, sir.

Q. When did you administer them?—A. In the morning when we organized the board, before they performed any of their duties.

Q. You had taken an oath before that to act as inspector of that election before the city clerk?—A. Yes, sir.

Q. Clarence L. Miller?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. You didn't sign any of those oaths, did you?—A. Yes, sir.

Q. Which one?—A. That one (indicating).

Q. Who is that sworn to before?—A. I swore to it before the city clerk.

Q. That appears to be sworn to before somebody else.—A. Apparently.

Q. They signed the jurat in your name?—A. That is my writing.

Q. You signed the jurat?—A. I signed them both.

Q. You first signed the oath then signed the jurat?—A. Yes, sir.

Q. The oaths administered to the gatekeepers, the first oath there; who was that gatekeeper?—A. Samuel Fields.

Q. He signed the jurat himself, didn't he?—A. He did.

Q. He didn't sign the oath at all?—A. He signed it in the wrong place.

Q. This book does not show that any officer administered an oath to him, does it?—A. No, sir; it does not.

Q. Who signed the oath of the next gatekeeper?—A. John Hansen.

Q. As gatekeeper?—A. Yes, sir.

Q. Did any officer sign the jurat?—A. No, sir.

Q. Witness, I ask you whether you administered an oath there to the keeper of the entrance gate to admit no one within the railing only those who entered for the purpose of voting or for the purpose of assisting someone in marking their ballot?

Mr. ADAMS. I object to that as irrelevant and immaterial and for the further reason that there is no allegation contained in the answer of the contestee to make any such proof material or competent in this proceeding.

A. I administered an oath to the gatekeepers—

Q. That question can be answered yes or no.

(Last question read.)

A. I administered an oath to the gatekeepers the same as it is in the book there.

Q. You didn't use that language?—A. I didn't word it that way; no.

E. E. LABADIE, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant, as follows:

Direct examination by Mr. ADAMS:

Mr. Labadie, you reside in the city of Kalamazoo?—A. Yes, sir.

Q. Have lived here how long?—A. About 20 years.

Q. Were you a member of the election board in the city of Kalamazoo at the general election held on Tuesday, November 5, 1912?—A. Yes, sir.

Q. What precinct?—A. The ninth precinct.

Q. Did you take any oath to act in any capacity as any officer of that election before anybody?—A. Yes, sir.

Q. Before whom?—A. The city clerk.

Q. What oath did you take? To act in what capacity?—A. As inspector of the election.

Q. Before Clarence L. Miller?—A. Yes, sir.

Q. As city clerk?—A. Yes, sir.

Q. When did you take that oath?—A. I took that on Monday night before election, I think on the 6th, and the election was held on the 7th. Or it was Monday night, that would be the 4th. The night of the council meeting.

Q. Were you a member of the council November 4, 1912?—A. Yes, sir.

Q. You were alderman from what ward?—A. The fourth.

Q. By virtue of your being alderman you were a member of the city council at that time?—A. Yes, sir.

Q. Do you know who the other inspectors were there that day?—A. Why, I have got it down in a little book I carry in my pocket.

Q. Have you it with you?—A. Yes, sir. I think I can tell without the book.

Q. What did you act as?—A. As inspector. John Verhage as inspector and Mr. Borne as inspector.

Q. Who were the clerks?—A. George E. Brown and John Bennett and M. McMoctur.

Q. Who as gatekeepers?—A. J. DeSwartz and Nicj Keiser.

Q. Do you know whether any oaths were administered to the other inspectors, clerks, and gatekeepers there?—A. Yes, sir.

Q. Who administered the oath to them?—A. I did.

Q. When?—A. In the morning before the polls opened.

Q. In what official capacity did you administer those oaths?—A. As chairman of the board.

Q. You had been sworn in before him as inspector by the city clerk?—A. Yes, sir.

Q. Did those men act there as inspectors and gatekeepers, respectively, that you have named?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. You didn't make any written oath?—A. We filled out the poll book there.

Q. You just filled out one book?—A. I think we filled out two books.

Q. You made them in duplicate?—A. Yes, sir.

Q. You made all the books in duplicate?—A. Yes, sir.

Q. They were all alike as you understand?—A. Yes, sir.

Q. Whatever occurred you put in one book and you put the same in the other book?—A. Yes, sir.

Q. You made out two statement books?—A. Yes, sir.

Q. And two tally sheets?—A. Yes, sir.

Q. And two poll books?—A. Yes, sir.

Q. Calculated to be the same?—A. Yes, sir.

Q. It is your recollection now that they are?—A. Yes, sir.

Q. Do you remember the oaths you administered to the gatekeepers?—A. The wording of it?

Q. Can you repeat it?—A. I don't know as I can, word for word, like this: "You solemnly swear that you will support the Constitution of the United States and the constitution of the State of Michigan and perform your duties to the best of your ability as gatekeepers at this election," or words to that effect, and the same with the clerks.

Q. By changing the name?—A. Yes, sir.

Q. How many gatekeepers did you have?—A. Two.

Q. Did you have an entrance gate?—A. Yes, sir.

Q. And one where the voters left the voting place?—A. Yes, sir.

Q. Did you have a railing around the booths?—A. Yes, sir.

Q. Those gates were placed in the railing?—A. Yes, sir.

Q. Did you have one gatekeeper at the entrance gate?—A. Yes, sir.

Q. Did you swear the gatekeeper at the entrance gate not to admit any persons within the railing only those who entered to vote or those who were in there to assist some voter in marking his ballot?

Mr. ADAMS. I object to that as irrelevant and immaterial, because there is no allegation in the contestee's answer to admit such proof.

A. I say yes to the question.

Q. You gave that language?—A. Well, I think I did, as near as I can remember it.

Q. Did you say "to perform your duties as gatekeepers to the best of your ability"? Was that the language you used?—A. I have been on the board sev-

eral years, and I know that no one is allowed behind the railing, and I think I used that language.

Q. That form of oath?—A. Yes, sir.

Q. You didn't recollect that when I first asked you?—A. I haven't had a chance to answer that yet.

Q. You gave the form?—A. That was for the inspectors.

Q. Did you use this form in the book: "I will support the Constitution of the United States and the constitution of this State and faithfully discharge the duties of the office of gatekeeper at this election to the best of my ability. So help me God"? Is not that about the language?—A. I swore the inspectors separately.

Q. Did you at this particular election, or did you swear them all in together?—A. No, sir; I did not.

Q. Did you swear them in separately?—A. Two by themselves; yes, sir.

Q. Now, can you give the oath you gave to the gatekeepers to the entrance gate?—A. I think I could. "That you will swear that you will support the Constitution of the United States and the constitution of the State of Michigan and perform your duties here to the best of your ability as gatekeeper and not admit anyone who is not entitled to vote," or words to that effect.

Q. Now, you think you are right this time?—A. I think I am.

B. F. VAN BLARCOM, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows, on behalf of the contestant:

Direct examination by Mr. ADAMS:

Q. Mr. Van Blarcom, were you a member of the election board in the city of Kalamazoo at the November 5, 1912, election?—A. Yes, sir.

Q. What precinct?—A. The twelfth precinct.

Q. At that time and for some several days before that date had you been holding any official position in the city of Kalamazoo?—A. Yes, sir.

Q. What?—A. Alderman I was.

Q. In the fifth ward?—A. Yes, sir.

Q. As such you were a member of the city council?—A. Yes, sir.

Q. Did you take any oath to act on the election board before any person before you acted on the board?—A. Yes, sir.

Q. When did you take that oath?—A. I believe it was the evening of the 4th of November, at the council meeting, 1912.

Q. Is that the poll book or is it not the poll book your board used there at that election, that Exhibit 95?—A. Yes, sir.

Q. Will you please read the first oath in that Exhibit 95?—A. (Reading:) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of inspector of election held on Tuesday, November 5, 1912, according to the best of my ability. So help me God. Signed B. F. Van Blarcom. Subscribed and sworn to before me this 5th day of November, A. D. 1912. Signed Clarence L. Miller, city clerk."

Q. Is that your signature there?—A. Yes, sir.

Q. You took that oath, did you?—A. Yes, sir.

Q. Did Clarence L. Miller swear you on the 5th day of November?—A. No, sir.

Q. You took the oath on the night of the 4th of November?—A. Yes, sir.

Q. Was the city council in session that night, do you remember?—A. I believe it was, if I remember rightly.

Q. I notice in this Exhibit 95 there is an oath there signed by F. C. Waterman as inspector?—A. Yes, sir.

Q. And James A. Warwick as inspector of election?—A. Yes, sir.

Q. And an oath signed by Daniel Swonk as inspector?—A. Yes, sir.

Q. And an oath signed by Milo Hyma as clerk of election?—A. Yes, sir.

Q. And another oath signed by Frank W. Warren as clerk of election?—A. Yes, sir.

Q. And another by Dave Crandall as clerk of election?—A. Yes, sir.

Q. And by W. H. Shakespeare as gatekeeper?—A. Yes, sir.

Q. And the jurat to each one of those oaths, except the oath you took before Clarence L. Miller, is under that jurat the name of B. F. Van Blarcom in each instance?—A. Yes, sir.

Q. Is that your signature?—A. Yes, sir.

Q. You put it there?—A. Yes, sir.

Q. I notice that under that signature there is no designation of the capacity you administered those oaths?—A. There is not.

Q. Now, in what capacity did you administer the oaths to those several men?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. As chairman of the board of election.

Q. When did you administer those oaths to those several gentlemen?—A. Just previous to opening the polls.

Q. Before or after you had taken the oath before Clarence L. Miller, city clerk?—A. After.

Cross-examination by Mr. MAYNARD:

Q. The oath that you administered to the gatekeepers is this oath here in this exhibit?—A. Yes, sir.

Q. Did you administer any other oath to those gatekeepers than that which appears there?—A. No, sir.

Q. Which one was the entrance gatekeeper?—A. Charles W. Davenport.

Q. You administered to him the oath that is in this book?—A. Yes, sir.

Q. Did you administer any oath in any other language than that oath there to him?—A. No, sir.

Mr. MAYNARD. You will concede that all the oaths are in the same form?

Mr. ADAMS. Yes.

W. E. GEARY, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. Mr. Geary, you live in the city?—A. Yes, sir.

Q. A business man here?—A. Yes, sir.

Q. How long have you lived in the city?—A. Thirty years.

Q. Did you act on the election board in the city of Kalamazoo on the 5th day of November, 1912, at the general election?—A. Yes, sir.

Q. What board?—A. In the seventh precinct, as inspector.

Q. I notice here in Exhibit "96" which I show you, this second certificate there or oath seems to be signed by W. E. Geary, oath of inspector of election; is that your signature?—A. Yes, sir.

Q. The jurat is signed by Benjamin O. Bush?—A. Yes, sir.

Q. Did Benjamin O. Bush administer the oath to you that day?—A. Yes, sir.

Q. Now, did you know, on November 5, 1912, a lady named Harriet Marsh?—A. Yes, sir.

Q. Was she there that day?—A. Yes, sir.

Q. While that election was being conducted, or any part of the day?—A. Yes, sir; part of the time.

Q. I understand that she claims she was there in the forenoon of that day; what did she do there that day?—A. She sat inside, about 3 feet from the table that contained the ballots.

Q. Did she handle or have anything to do that day with any of the ballots that were used at that election while you were there?—A. No, sir.

Cross-examination by Mr. MAYNARD:

Q. Did you have a railing surrounding the booths at that election precinct?—A. Yes, sir; a partition straight across, with a door about 3 feet high where the ballots were handed over.

Q. Which way does the building face?—A. Faces to the east.

Q. The voters came in from the east?—A. Yes, sir.

Q. What did they enter when they first came into the room?—A. They entered a hallway leading right up to where they received their ballots.

Q. Which way did the hallway run?—A. East and west.

Q. How long a hall was it?—A. Why, 10 feet, possibly 12.

Q. Did this hall go to the room where the voting place was?—A. Yes, sir; straight to the window.

Q. What window?—A. The doorway where the ballots were handed over.

Q. Was that room where the ballots were handed over in the same room you were in?—A. No, sir; the election board sat in one room and the booths were in another.

Q. Could the election board see the voters until after they got the ballots?—A. No, sir.

Q. Mrs. Marsh—A. Miss Marsh.

Q. This young lady had a seat in here where the board was?—A. Yes, sir; in the same room.

Q. Where the ballots were being distributed?—A. Yes, sir.

Q. Do you know what she was there for?—A. She was admitted by card, I suppose, to look after the Suffrage interests.

Q. She was there to influence people to vote for Suffrage was she not?—A. I don't think so.

Q. If she said so on the stand to-day, she was mistaken?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. I couldn't answer that question.

Q. If she said so on the stand here to-day, that her object was to influence people to vote for the Suffrage question—if she so testified that, that would be a mistake, would it?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not a proper question for counsel to ask.

A. I don't know how I would be able to judge what her intentions were.

Q. You gave a response on direct examination that she was not there for that purpose, didn't you?—A. Just what her intentions were, I couldn't tell you.

Q. You thought they were perfectly honorable, didn't you?—A. Yes, sir.

Q. Witness, did you have an entrance gate into the booths?—A. Why, the booths opened up into the entrance.

Q. In this voting precinct you didn't have any railing around the voting place, did you?—A. No, sir.

Q. The voting booths were in a room by themselves, were they not?—A. Yes, sir.

Q. After the voter received the ballot at the door in the room where the board of inspectors were sitting, they took their ballot and proceeded along the hall and opened a door that went in where the voting room was?—A. They were given a booth by the gatekeeper.

Q. He took them to the booths?—A. Yes, sir; that were vacant.

Q. How did they get in where the booths were, through the door?—A. They stepped right into the booths; the booths were lined up and they received their ballots——

Q. The door of each booth opened into the hall?—A. Yes, sir.

Q. This hall was separate from the place where the board of inspectors were?—A. Yes, sir.

Q. That is, the hall run east and west?—A. Yes, sir.

Q. There were doors opening to the north into the hall from each booth?—A. They opened to the south; they came in on the northeast corner of the building.

Q. They must have entered from the north?—A. No, sir; the northeast corner of the building, facing east; they came in and walked up and got their ticket.

Q. They came in from the east?—A. Yes, sir.

Q. The first door they arrived at was a half door where the ballots were delivered?—A. Yes, sir.

Q. Which way did that door face?—A. East.

Q. They came right back to that door?—A. Yes, sir.

Q. Which way did the hall go they came from when they departed from the window?—A. They went south into the booths: went in one side of the booth and out of the other; came in from the north side of the booth and came out the south side of the booths, out to the man who received and deposited their ballots.

Q. They entered the booths from the north side?—A. Yes, sir.

Q. In the door from the north side into the booths?—A. Yes, sir.

Q. And passed through and came out on the south side of the booths?—A. Yes, sir.

Q. And delivered their ballot to one of the inspectors?—A. Yes, sir.

Q. Who received the ballots there?—A. I don't know his name; I think Jim Chase, if he was on; he has been on two or three times and I have got mixed up with Jim Chase's name; if it appears there, he received the ballots.

Q. Which corner of the room was he in?—A. In the southeast corner.

Q. Where the votes came out?—A. On the south side of the building.

Q. Going out on the street?—A. Out into the alley.

Q. On the side of the building?—A. Yes, sir.

Q. Did you have any railing there or was the door the only thing between him and the alley?—A. The only thing.

Q. He went out of the door?—A. Yes, sir.

Q. Did those booths come clear to the ceiling?—A. I think not.

Q. How high did they go?—A. About 8 feet.

Q. About 8 feet high?—A. Yes, sir.

Q. From where the board of inspectors sat they could not see the booths?—A. No.

Q. But they could see the voters when they left the booths?—A. Yes, sir; from where I was I could not.

Q. Were you able to see them when they left?—A. Because I sat in the southwest corner and where they deposited their ballots they went out of the door on the south side. I could see them over the half door where they deposited their ballots.

Q. Was this room in which the inspectors sat facing the east?—A. Facing the east.

Q. There was a door opening into that half door where you delivered the ballots?—A. Yes, sir.

Q. That was on the east side of the room?—A. Yes, sir.

Q. From that door where they got their ballots they went straight east—straight west—on the north sides of the booths; and came into the booths on the north side?—A. They came into the booths on the north side and went out on the south side.

Q. Went out of the door on the southeast corner?—A. Yes, sir.

Q. That room in which the board sat, where was there room for a door there where you could see them leave; in which part of the room?—A. Why, the gate where they received their ballots was on the east side of the room, not the south side of the room. The door where they left was on the south side also.

Q. Then the door at which you delivered the ballots to the voters was in which corner of the room?—A. The northeast corner. The voters came in here [indicating] and received their ballots at the half door or gate standing about 3 feet high and they handed their ballots over here and they took their ballots and the gatekeeper admitted them to whatever booth was vacant, and after they voted they came out and deposited their ballots there and they let them out there and they walked to the street again—this is Potter Street along up here, and here is a long table where the folks are and another table here and there is where Miss Marsh sat, right there.

Q. Now, witness, the voters came in at the northeast corner?—A. Yes, sir.

Q. They came in opposite the booths?—A. Yes, sir.

Q. And when they came in they passed along by the side of the booths and there was no railing between the booths and the voters?—A. No, sir.

Q. A gatekeeper was placed at that entrance gate and in the northeast corner of the building?—A. Yes, sir; inside.

Q. The entrance gatekeeper was on the inside of the gate?—A. Yes, sir.

Q. They proceeded to the northeast corner of that first room they entered into?—A. Yes, sir.

Q. And received their ballots through the half window there?—A. Yes, sir.

Q. There was no gatekeeper at that door, was there?—A. The ticket man stood there that handled the ballots.

Q. No gatekeeper attended that door?—A. No, sir.

Q. The voters had to pass between that row of booths and that single booth to get their ballots?—A. Yes, sir.

Q. The next room, or back room, in which the board of inspectors sat there was a table running across the room extending north and south, was there not?—A. Yes, sir.

Q. On that table what was deposited?—A. The ballots, and on one end the clerks working at their side.

Q. In that book room was there any door of egress?—A. Yes, sir.

Q. Whereabouts?—A. There was a door in the rear.

Q. Opening into what?—A. Into a storeroom—boiler room.

Q. Could you get out of the backway in going to the west?—A. Yes, sir.

Q. Did you have any gatekeeper there?—A. No, sir; the door was locked.

Q. Your board of inspectors were in this back room?—A. Yes, sir.

Q. In the southeast corner of the room what did you have—the southwest corner?—A. The man who received the ballots.

Q. In the southwest corner of the room?—A. Yes, sir.

Q. Who received the ballots?—A. No, southwest; there was a table there.

Q. What was done on that table?—A. The ballots were initialed on the table.

Q. Whereabouts was Miss Marsh?—A. She sat to the north and west of the end of the table.

Q. When she was standing up she could see over that half door and see the voters when they were going in?—A. Yes, sir.

Q. But from the position in which she was in she could not see any of the voters when they were delivering their ballots or leaving the room, could she?—A. No, sir; she could see them delivering them if they came close enough to the window, but not leaving the room.

Q. Where did the person who was receiving the ballots stand?—A. He stood close to the half door.

Q. In the southeast corner of the back room?—A. In the southeast corner of the back room.

Q. There was a double door opening into the room east of it?—A. No, sir; not a double door.

Q. Or a half door, I would say?—A. Yes, sir; a half door.

Q. When the voters received their ballots from the northwest corner of the first room they entered, if the booths were full and they wanted to use a booth on the north side of the front room, where did they go?—A. They had to wait if the booths were full.

Q. Until the booths were free?—A. Yes, sir.

Q. And then pass through?—A. Yes, sir.

Q. Was there a booth in the room in the southeast corner of that building?—A. Yes, sir; very close to the southeast corner.

Q. Was that where that door was, that door of exit into the alley?—A. Yes, sir.

Q. Now, if any voter had taken any ballots there was nothing to hinder him walking right out of that door into the alley at all?—A. We had a gatekeeper there.

Q. You had three gatekeepers?—A. No, sir; two.

Q. Did you have one at the door that opened into the back room?—A. Yes, sir; there was one there. One where they received the ballots, and one where they deposited the ballots, two gatekeepers.

Q. Did you have one where they first came in?—A. Yes, sir; we had one here and one here. [Indicating.]

Q. And one where they went out of that door?—A. Yes, sir.

Q. You didn't have one here where they deposited the ballots or handed them over that half door to the officer who received the ballots?—A. Yes, sir; there was a man right there, this same man, it was only a small space to stand there.

Q. One man attended to both places?—A. It was about 4 feet wide and 8 feet long.

Q. How many booths were there running east and west—in the first room?—A. Well, sir; I would have to guess at that; I would say six.

Q. Besides the two on the end?—A. Yes, sir; making about eight in all.

Q. Those booths did they have partitions that went clear to the ceiling?—A. They had doors on both sides of them and ran up about 8 feet.

Redirect examination by Mr. ADAMS:

Q. What was this building in which this election was held?—A. I think it was built on purpose for that.

Q. Built on purpose for that?—A. Yes, sir.

Q. Were there any rooms in the building on the floor in which this election was held than those you have described?—A. No, sir.

Q. In the west room was a door where the inspectors were stationed leading outdoors somewhere?—A. At one end of the room.

Q. That door was locked I understand?—A. Yes, sir.

Q. Nobody could come in or go out with that locked?—A. It was locked on the inside.

Q. So the board of inspectors had charge of the key to that door?—A. Yes, sir.

Q. Now, then, there was a gatekeeper stationed where the voters came in that day, was there?—A. Yes, sir.

Q. There was a gatekeeper stationed on the other sides of the booths where the exit was for the voters to go out?—A. Yes, sir.

Q. I am going to make A there and B there and C and D there and E, and I show you now what is called "Exhibit 96," where you notice A in the circle there, was that the entrance?—A. Yes, sir.

Q. There was a door there?—A. Yes, sir.

Q. The voters came in there?—A. Yes, sir.

Q. Was there a gatekeeper anywhere near A as marked on that Exhibit 96?—A. He admitted them.

Q. Where did he stand when he admitted them?—A. Inside of the door, with his hand on the door.

Q. B where you find that in a circle, state what was done at that point?—A. We took their names there and the ballots were handed out.

Q. The inspector who handed the ballots there stood where?—A. He stood close to the gate.

Q. Which side of the gate?—A. On the inside.

Q. The west side?—A. Yes, sir.

Q. The voter received his ballot at B, then where did he go?—A. He went to one of the vacant booths.

Q. After getting ready to deposit his ballot, where did he go then?—A. He passed through the opposite side of his booth and went to the window marked D.

Q. Was there any inspector near D?—A. Yes, sir; about where that circle is.

Q. There was a half door there?—A. Yes, sir.

Q. What do you mean by a half door?—A. Just as that door there, the middle of it just below the long panels and a flat rail put on top, built for that purpose.

Q. How high was it?—A. About 3 feet.

Q. The inspector stood on the west side of that?—A. Yes, sir.

Q. At or near D the voter came up to D and deposited his ballot there, did he?—A. Yes, sir.

Q. Where did the voter go after he deposited his ballot?—A. He went out of the door by the gatekeeper.

Q. What door?—A. The door on the southeast corner of this building marked C.

Q. Where C is in the circle?—A. Yes, sir.

Q. Was there a gatekeeper there?—A. He stood there, and back and forth to give them orders.

Q. Were the voters allowed to go into the room back of this half door which was near the point where you find B and C in the circle?—A. No, sir.

Mr. ADAMS. We offer Exhibit 97 in evidence.

Q. I show you Exhibit 96; I notice there that James B. Chase just took the oath as inspector, signed the oath as inspector; is that correct, on this book?—A. Yes, sir.

Q. William W. Wilson signed it as clerk?—A. Yes, sir.

Q. James Prudle signed it as clerk?—A. Yes, sir.

Q. And Arthur Milton signed it as clerk and Charles Hand took the oath as gatekeeper?—A. Yes, sir.

Q. And George T. Brown signed it as gatekeeper?—A. Yes, sir.

Q. Now, do you know before whom the men I have named took their respective oaths for their respective positions that day?—A. B. O. Bush.

Q. Ben O. Bush was the same Ben O. Bush whose name appears there signed to that certificate, that oath, before Clarence L. Miller, city clerk?—A. Yes, sir.

Q. When were those oaths administered to you and those other gentlemen?—A. Before opening the polls in the morning.

Q. Was the city clerk up there that morning?—A. Yes, sir.

Q. What time was he there?—A. Why, he was there pretty early that morning; I expect a little after 7 o'clock.

Q. Do you know whether the city clerk administered any oath to B. O. Bush that morning?—A. No, sir.

Q. You don't know about that?—A. I do not.

Q. You don't know when B. O. Bush was sworn by Clarence L. Miller?—A. I understood the night before.

LAWRENCE HOLLANDER, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestant as follows:

Direct examination by Mr. ADAMS:

Q. You live in Kalamazoo?—A. Yes, sir.

Q. You have lived here a number of years?—A. Yes, sir.

Q. Were you a member of the election board in the city of Kalamazoo at the November 5, 1912, election?—A. Yes, sir.

Q. What board were you on?—A. In the eleventh precinct—the election board in the eleventh precinct.

Q. Did you take an oath before commencing to act as inspector or otherwise on that board?—A. Yes, sir.

Q. Before whom?—A. Before Clarence L. Miller, city clerk.

Q. I show you Exhibit 98; what is that?—A. That is the poll book of the general election held in the eleventh precinct in the fourth ward of the city of Kalamazoo on the 5th day of November, 1912.

Q. Will you read the first oath or certificate that you find in that book?—A. (Reading.) “I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Signed Lawrence Hollander. Subscribed and sworn to before me this 5th day of November, A. D. 1912. Signed Clarence L. Miller, city clerk.”

Q. Who signed that certificate, Lawrence Hollander?—A. I did.

Q. When did you sign that?—A. I signed that the evening of the election—the morning of the 5th day of November.

Q. Where?—A. At the election place.

Q. Now, were you sworn before Clarence L. Miller at that time?—A. No, sir.

Q. When were you sworn before him?—A. If I remember right, I think on the second day of November, before Clarence L. Miller, city clerk.

Q. I notice there is a certificate signed by Cornelius Grofott as inspector?—A. Yes, sir.

Q. A certificate or oath by Cornelius Van Waldron as inspector?—A. Yes, sir.

Q. And a certificate signed by John Goudeau?—A. Yes, sir.

Q. As inspector of election?—A. Yes, sir.

Q. And a certificate signed by Peter D. Bluin as clerk?—A. Yes, sir.

Q. And a certificate signed by L. C. Kackett as clerk of election?—A. Yes, sir.

Q. And by George Dilkert as clerk of election?—A. Yes, sir.

Q. And a certificate signed by L. B. Maus as gatekeeper?—A. Yes, sir.

Q. And another certificate by Joseph Kiel as gatekeeper?—A. Yes, sir.

Q. In this exhibit?—A. Yes, sir.

Q. Isn't that true?—A. Yes, sir.

Q. The oath under each one of those certificates, except the one you signed and took the oath before Clarence L. Miller—the jurat is signed by Lawrence Hollander?—A. Yes, sir.

Q. In that exhibit?—A. Yes, sir.

Q. Is that your signature?—A. Yes, sir.

Q. In each of those instances?—A. Yes, sir.

Q. I notice there is no official designation under your signature to those respective oaths?—A. Yes, sir.

Q. In what capacity did you administer those oaths to those several gentlemen?—A. As chairman of the board of election.

Q. At the time you did that were you or were you not sworn in before Clarence L. Miller, city clerk, as inspector of that election?—A. Yes, sir.

Q. When did you administer the oath to those respective gentlemen whose names I have called your attention to?—A. Previous to opening the polls.

Q. On what day?—A. The 5th day of November, probably 15 minutes to 7 o'clock in the morning.

Q. On the 5th day of November, 1912?—A. Yes, sir.

Cross-examination by Mr. MAYNARD:

Q. Did you administer the oaths to the gatekeepers?—A. Yes, sir.

Q. Was this the only oath you administered to them?—A. There was but one oath I administered to the gatekeepers.

Q. You made it no different than the form you found there when you swore in the gatekeepers—the entrance gatekeeper?—A. Yes, sir; I added in something there. I told them to discharge their duties faithfully and impartially as gatekeepers.

Q. How did you come to be chairman of the board?—A. I was informed by the clerk that I was on the list.

Q. After taking the oath you went there and assumed the duties of chairman?—A. Yes, sir.

Q. And acted in that capacity all the way through?—A. Yes, sir.

Mr. ADAMS. I offer in evidence act No. 8 of the public acts of the extra session of the Legislature of the State of Michigan for the year 1912, being an act to amend section 23 of act No. 190 of the public acts of 1891, as amended, entitled "An act to prescribe the manner of conducting and to prevent fraud and deception at elections in this State," said amended section being 3633, Compiled Laws of 1897.

Will you concede these are the public acts of the special session of the Legislature of the State of Michigan?

Mr. MAYNARD. Yes, sir.

The people of the State of Michigan enact:

SECTION 1. Section 23 of act No. 190, Public Acts of 1891, as amended, entitled "An act to prescribe the manner of conducting and to prevent fraud and deception at elections in this State," is hereby amended to read as follows:

"SEC. 23. At every election, each of the political parties, and any organization or committee of citizens interested in the adoption or defeat of any measure to be voted for or upon at any election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, shall have the right to designate and keep not exceeding two challengers at each place of voting, who shall be assigned such positions immediately adjoining the inspectors inside the polling place as will enable them to see each person as he offers to vote, and a seat and table or desk on which he may write within the railing shall be furnished for the accommodation of one of such challengers, and he shall have the right to inspect the poll lists as kept by the clerks, and who shall be protected in the discharge of their duty by the inspectors and police. Authority signed by the recognized chairman or presiding officer of the chief managing committee of any organization or committee of citizens interested in the adoption or defeat of any measure to be voted for or upon at any election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise or any political party in such county or township, city, ward, or voting precinct shall be sufficient evidence of the right of such challengers to be present inside the room where the ballot box is kept. The chairman appointing any challenger may, at his discretion, remove him and appoint another. Any challenger shall have the right and privilege of remaining during the canvass of the votes and until the returns are duly signed and made. Any officer or election board who shall prevent the presence of such challengers as above provided, or shall refuse or fail to provide such challengers with conveniences for the performance of the duties expected of them, shall, upon conviction, be punished as provided in section 45 of this act.

"Approved April 9, 1912."

Mr. ADAMS. Unless you will concede it, I want to show that Charles Ray was a justice of the peace in the township of Texas, Kalamazoo County, Mich.

Mr. MAYNARD. We admit that.

Mr. ADAMS. It is conceded, then, that Charles Ray was a justice of the peace and had been for several days prior to November 5, 1912, in the township of Texas.

CLAUDE S. CARNEY, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified in his own behalf as follows:

Direct examination by Mr. ADAMS:

Q. Your name is Claude S. Carney?—A. That is my name.

Q. Are you the contestant in this proceeding?—A. I am.

Q. When, Mr. Carney, did you first learn of the facts in connection with the failure of the election board of the township of Windsor, Eaton County, Mich., to have initialed the ballots that were used at the general election November 5, 1912, on which the different candidates names—candidates for Representative in Congress—were printed not having been placed below the perforated corner, or line, which was on one corner of the ballot?—A. The first intimation I had of that matter was by a letter which I received and opened on the 14th of April, a letter from Sam Robinson, of Charlotte; the letter was dated April 12. I got it the Monday morning following.

Q. That was the first intimation you received in regard to that, was on the 14th of April, 1913?—A. Yes, sir.

Mr. MAYNARD. I want this testimony taken subject to this objection, and want the objection to appear after the first question asked the witness. I object to

it as incompetent and immaterial, that there is nothing in the notice of contest to warrant any inquiry of this kind, and that the application for leave to amend was made at a time when the time for taking testimony on the part of the contestant had expired. From the testimony already given in this matter it appears that it was not a secret matter but was known to Democrats and Republicans alike, that it has been the practice of that board for years to conduct their elections in that manner. That there has been no inquiry made by the friends of the contestant or information given him by his friends on matters which were well within their knowledge, by those who were in charge of matters for the contestant, and at this time nothing but evidence in rebuttal can be taken and it is not rebuttal.

Mr. ADAMS. We make the same offer that was made the other day at Charlotte, if you desire to rebut the testimony that has been taken in reference to Windsor Township taken at Charlotte yesterday, April 29, 1913, or the testimony taken here in Kalamazoo this 30th day of April, 1913, with reference to Windsor Township, we will stipulate a reasonable length of time for counsel to put in such evidence in rebuttal of the facts relative to Windsor Township which were put in yesterday at Charlotte, Mich., or make such answer as they want to make in relation thereto; such answer as they may want to make to the proposed amendment filed by the contestant.

Mr. MAYNARD. It is stipulated and agreed on the record that the contestant's copy of the contestant's application to Congress for leave to amend his notice of contest was mailed to Horace S. Maynard, attorney for the contestee, at the city of Kalamazoo, Mich., on the 22d day of April, and was received by said attorney for the contestee on the 23d day of April, 1913. And that a copy of the same petition and the proposed amendment was personally served on John M. C. Smith, the contestee, in Washington, D. C., on the 24th day of April, 1913.

Mr. ADAMS. Will you stipulate that Exhibit 99, which I now offer in evidence, is a correct copy of the contestant's application to Congress for leave to amend?

Mr. MAYNARD. Yes; but I will make the formal objection as incompetent and immaterial.

The WITNESS. This is a copy of the original notice of contest and petition to Congress in this contested election.

Q. Referring now to your information with regard to the failure of the township board of Windsor to initial the ballots referred to, in what we claim is the proper place to initial them, when you received the information which you say you did receive on or about the 14th of April, 1913, what did you do in relation to it?

Mr. MAYNARD. May it be considered that the objection made to the first question propounded to the witness may stand and cover all that the witness gives evidence of in this inquiry, of like nature?

Mr. ADAMS. As far as Windsor Township is concerned, yes.

A. The first thing I did was to consult with you, one of my attorneys in this matter, my attorney of record, John W. Adams. I believe that was not until the 15th or 16th, I think the 16th, it seems to me that a day or two days elapsed before I was able to see Judge Adams. On the 18th day of April I went over to Charlotte from Kalamazoo by rail and there I conferred with R. L. Sowers, an attorney at Charlotte. I did not see the writer of the first information, Robinson, at that time; but in my presence Mr. Sowers telephoned to Dimondale, which is located in Windsor township, and together with Mr. Sowers we drove in an automobile from Charlotte to Dimondale and there interviewed Mr. M. V. Mulholand, who was the first person I talked with who claimed to know anything about the facts except by hearsay. All the information, substantially, we got from him was that his ballot was initialed upon the upper corner above the perforated line and he gave us the name of some of the election board. I don't think he gave us all the board, but some of the election board who he said would tell us about the transaction. Together with Mr. Sowers we then visited Ray Burnett who claimed to be the clerk of the November fifth election and township clerk I think at that time; and he was the first person who gave me the full information that none of the ballots when counted bore the initials of the inspectors. From him we found who the other members of the board were with one exception I think. I think he told us the names of two other members of the board but he was not just sure, he got one election mixed with another. He gave us the name of Mr. W. J. Bateman who claimed to be supervisor at that election and one of the inspectors, and we talked with Mr. Bateman about the transaction. He verified the information Mr. Burnett had given us. Then we drove back toward Charlotte and on the way we stopped

at S. J. Vanderbeck's residence. I did not see Mr. Vanderbeck himself; Mr. Sowers went back in the field and talked with him, what he said I don't know except what Mr. Sowers told me about it. I stayed with the chauffeur and helped tinker the automobile.

Q. Then what did you do?—A. I then returned to Charlotte and to Kalamazoo by rail. Then I think within a couple of days, or three days at least, I made a full report of what I had learned to John W. Adams, one of my attorneys in this matter. If I remember rightly he was away when I returned. The talk was by telephone, I think he was about to go away again. I did not have an opportunity of seeing Judge Adams or talking with him except by telephone. Over the telephone we talked over this matter and then I commenced business and personally drafted a petition and notice that was finally filed, of which Exhibit 99 is a copy, which has been stipulated as the one that was served. On the 22d, I mailed one to H. S. Maynard at Charlotte so he could get it as early as possible and the other I mailed to the tally clerk of the House and asked him to serve a copy on John M. C. Smith.

Q. Now the information you stated you first got—was or was not that the first information you had of these facts?—A. The first information of any kind I had.

Q. The first information you ever had?—A. Yes, sir.

Q. Were you at any time before the board of county canvassers of Eaton County after the November 5, 1912 election?—A. I was.

Q. When?—A. It was during their session, I think the second day of their session. I think it was the day after the day provided by law for the first meeting.

Q. What, if any, claim did you make to the board there when you were before the board?

Mr. MAYNARD. I object to that.

Q. What did you say?

Mr. MAYNARD. I object to that as incompetent and immaterial and not proper rebuttal.

Mr. ADAMS. I will withdraw that.

Q. What, if any, claim did you make before that board of county canvassers concerning any fraud in that election, or any part of the election in Eaton County?

Mr. MAYNARD. I object to that as incompetent and immaterial and not proper rebuttal.

A. Mr. Brown testified that I said something to the effect that I made no claim of any fraud. I did not make this statement but what I did say was this: That I made no claim that that canvassing board had any jurisdiction to pass upon any question of fraud. That is the only statement I made in reference to that matter.

Q. What did you ask that board, if anything, to do?

Mr. MAYNARD. I object to that as incompetent and immaterial and not rebuttal.

A. The only action I asked the board to take. I asked the clerk to reduce to writing, which he did in my presence before I left, so that I could not be misquoted afterwards. As my recollection serves me the minutes of that board are exactly as I stated it before them. I think they are transcribed from the printed slip and the record is exactly as written down in the first place as near as I can recall.

Q. Have you with you the notice you have given for the taking of testimony in your behalf in this proceeding?—A. I haven't all of those.

Cross examination by Mr. MAYNARD:

Q. You have John W. Adams as one of your attorneys of record?—A. Yes, sir.

Q. Who is the other attorney of record?—A. E. C. Shields, of Howell.

Q. Just to get it on the record I will ask you, has E. C. Shields been present at the taking of any testimony during this contest?—A. No, sir; I don't think he has been present at any of the hearings; I have been in conference with him; he was not present.

Redirect examination by Mr. ADAMS:

Q. Have you retained E. C. Shields as one of your attorneys in this contest?—A. I have.

Q. When did you retain him with reference to the time you began the proceedings?—A. It was some time before the filing of this contest; when steps

were taken in it I consulted with Mr. Shields, who was formerly a college classmate of mine, and retained him at that time.

Q. You have consulted with him at different times since that?—A. Yes, sir; from time to time, both in person and, I think, by telephone.

Q. I show you, Mr. Carney, what purports to be Exhibit 101 in this contest and ask you to explain what it is?—A. Exhibit 101 is a schedule of the number of miles traveled by each of contestant's witnesses, whose names appear thereon, in going to the respective places that each witness was summoned for the purpose of taking his deposition in this case, and also contains the number of miles required by each witness respectively to return to his place of residence, and the number of days each witness attended in giving his deposition. And each witness has already received as fees the sum of money set opposite to his name in the last column under the title of "Total fees," in accordance with this schedule.

UNITED STATES OF AMERICA, *State of Michigan.*

I do hereby certify that I am now and have been for a period of one year last past a notary public of the State of Michigan and United States commissioner for the western district of Michigan in the third congressional district of the State of Michigan, and that as such United States commissioner and notary public that each of the witnesses whose deposition and testimony is hereunto annexed were by me sworn to tell the truth, the whole truth, and nothing but the truth, and that I did correctly take down stenographically the testimony given in said matter by each of said witnesses, and that the testimony of said witnesses hereunto annexed is a correct and true transcript of the testimony given by each witness and of the whole thereof.

I further certify that annexed hereto are all of the depositions taken before me as such notary public and United States commissioner on the part of the contestant, Claude S. Carney, and all of the depositions taken before me as United States commissioner and notary public on the part of the contestee, John M. C. Smith, that all oral stipulations made between attorneys for the respective parties before me at the time of taking said testimony were by me correctly taken down stenographically and correctly transcribed and made a part hereof; and that all written stipulations entered into and signed by the respective parties and hereunto annexed were delivered to me by the attorneys for the respective parties for the purpose of being made a part of this record and are annexed hereto, a part hereof; that the annexed depositions consist of volume 1, containing 226 pages; volume 2, containing 125 pages; volume 3, containing 71 pages; volume 4, containing 8 pages; volume 5, containing 60 pages; volume 6, containing 50 pages; volume 7, containing 119 pages, on the part of the contestant, and that annexed hereto is also volumes 1, 2, 3, and 4, containing 833 pages, and volume 5, containing 183 pages; volume 6, containing 224 pages, and volume 7, containing 185 pages, taken on behalf of the contestee.

I further certify that annexed hereto are all of the exhibits which were delivered to me by the attorneys for the respective parties for the purpose of being transmitted as a part of the different depositions taken in said cause; that annexed hereto are also copies of the contestant's witness subpoenas.

I further certify that all notices to take the depositions of the different witnesses on the part of the contestant and on the part of the contestee are annexed hereto and by me returned with the said depositions; and that a copy of the contestant's notice of contest and a copy of the contestant's amendment to his said notice of contest, together with the answer of contestee, is prefixed to the said depositions and returned herewith; that all of the said volumes of depositions above described taken on the part of the said contestant and the said contestee, together with the notice of contest and the amendment to said notice of contest, the answer of the contestee, John M. C. Smith, the aforesaid exhibits, subpoenas, and all of said notices to take the said depositions are hereunto annexed and fastened together and annexed hereto and to said depositions is a stipulation entered into between the parties hereto, through their respective attorneys, waiving certain requirements and irregularities in the taking of the depositions above described.

In witness whereof I have hereunto set my hand and seal this 24th day of May, A. D. 1913.

[SEAL.]

JOS. W. STOCKWELL,
Notary Public and United States Commissioner.

My commission as notary public expires July 8, 1913.

My commission as United States commissioner expires October 19, 1914.

TESTIMONY FOR CONTESTEE.

MARCH 20, 21, 22, 25, 26, AND 27, 1913.

Mr. MAYNARD, for the contestee. I file with the magistrate a copy of the answer with proof of service having been served upon the contestant on the 3d day of February, 1913.

Mr. ADAMS. I object to the filing of that with the commissioner and making it a part of the record as unnecessary and that it is an improper proceeding to file it here and is incompetent, irrelevant, immaterial, and inadmissible.

(Copy of answer marked "Exhibit 53.")

Mr. MAYNARD. We also file our selection of Joseph W. Stockwell, notary public in and for the county of Kalamazoo in said third congressional district, State of Michigan, before whom to take our testimony for the respondent John M. C. Smith, reserving the right to take testimony before one or more notaries public besides him.

(Marked "Exhibit 54.")

We also offer in evidence the commission of Joseph W. Stockwell as notary public and will read it into the record. [Reading:]

STATE OF MICHIGAN.

[Michigan's coat of arms.]

EXECUTIVE DEPARTMENT.

Fred M. Warner, governor in and over the State of Michigan, to all to whom these presents shall come, greeting:

Know ye that, reposing special trust and confidence in the integrity and ability of Jos. W. Stockwell in the name and by the authority of the people of the State of Michigan, I do appoint him notary public for the county of Kalamazoo in said State of Michigan, and I do hereby authorize and empower him to execute and fulfill the duties of that office according to law, to have and to hold the said office, with all the rights, privileges, and emoluments thereunto belonging, for the term of four years from the date hereof, unless the governor of the State for the time being should sooner revoke and determine this commission.

In testimony whereof I have caused these letters to be made patent, and the great seal of the State to be hereunto affixed.

Given under my hand at Lansing this 8th day of July, in the year of our Lord 1909, and of the Independence of the United States of American the one hundred and thirty-fourth.

By the governor:

FRED M. WARNER.

[Seal of the State of Michigan.]

FREDERICK C. MARTINDALE,
Secretary of State.

(Marked "Exhibit 55.")

Mr. MAYNARD. We also offer in evidence Exhibit 56, being the notice to take proofs here to-day, due personal service is accepted by John W. Adams, attorney for the contestant.

DENNIS A. HAGER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Hager, what is your given name?—A. Dennis A. Hager.

Q. Where do you reside?—A. In the township of Sunfield.

Q. Do you hold any township office in the township of Sunfield? If so, what?—A. I do; I am a justice of the peace there.

Q. Were you a justice of the peace on the 5th day of last November?—A. Yes, sir.

Q. Did you act as one of the election board at the general election held in Sunfield township on the 5th day of November, 1912?—A. I did.

Q. Were you present when the board was organized on the morning of the 5th?—A. I was.

Q. Were the several officials who operated on that board—did they administer the constitutional oath to those officers in the morning before the opening of the polls?—A. Yes, sir.

Q. Who administered the oaths?—A. Mr. Bacon, the other justice of the peace that was on the board; then I administered the oath to him.

Q. He administered the oaths orally to all of those who acted upon the board but himself?—A. Yes, sir.

Q. And you administered the oath to him?—A. Yes, sir.

Q. Was that constitutional oath administered before you opened the polls?—A. Yes, sir, before; when we organized.

Q. Was that orally administered or did you sign the oaths?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not the best evidence. The returns speak for themselves and can not be disputed in that regard.

A. That was orally at that time.

Q. When did you sign the oaths that were placed in the returns?—A. On the 6th day of November—the next day.

Q. Did you finish the count?—A. Yes, sir; we finished the count.

Q. And the returns were then made up, were they?—A. Yes, sir.

Q. After you had the polls opened on the morning of the 5th did that election proceed without any interruption until the noon hour?—A. It did.

Q. Then what was done?—A. We adjourned for one hour at noon.

Q. What occurred; what did you do with the ballots and the voting place when you adjourned?—A. The boxes were left on the table, and we left one of the gatekeepers in charge of the boxes.

Q. Do you know whether the box was locked or not?—A. It was.

Q. Who held the key?—A. I think Mr. Knapp.

Q. Was he one of the clerks of the election?—Yes, sir.

Q. He had been sworn in to that office in the morning?—A. Yes, sir.

Q. Who did you leave in charge of the precinct?—A. Mr. Slater.

Q. Who was he?—A. He was one of the gatekeepers.

Q. Had he been sworn in to that office in the morning?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. He had.

Q. When were the polls opened in the afternoon?—A. At 1 o'clock.

Q. Did you begin then again?—A. We did.

Q. How long did you continue to have the polls opened?—A. Until 5 o'clock.

Q. Were you there when the polls were closed?—A. At night?

Q. Yes, sir.—A. Yes, sir.

Q. What time did you close the polls?—A. At 5 o'clock.

Q. Did you leave the voting precinct after the polls were closed before you began the count?—A. No, sir; I did not.

Q. How did you get your supper?—A. Why, I went over to a restaurant and got my supper after we commenced the count. Mr. Bacon and Mr. Palmer were reading the ballots while I went and got my supper.

Q. Was Mr. Bacon a justice of the peace and Mr. Palmer held the office of supervisor?—A. Yes, sir; chairman of the board.

Q. Did you assist in counting any before you went after your supper?—A. Yes, sir; I did.

Q. State what was first done after you closed the polls.—A. When we closed the polls we opened the ballot box and counted the ballots and tallied them up with our poll lists to see if they were all right.

Q. Did you have any excess of ballots?—A. We did not; they were all straight. Then we went to counting the ballots. Mr. Bacon went and got his supper and Mr. Palmer and I counted or read the ballots while Mr. Bacon got his supper.

Q. Who read them, you or Mr. Palmer?—A. We changed off; one didn't read all the time.

Q. When one was reading what was the other doing?—A. Looking over the ballots with him.

Q. All the while there were two that were watching the ballots?—A. Yes, sir; every minute.

Mr. ADAMS. I object to this mode of examination, because the questions are exceedingly leading; I object to the question as leading.

Q. You may state whether or not when one of you officers were reading the ballots the other one was watching to see that no mistakes were made.

Mr. ADAMS. I object to that as leading.

A. Yes, sir.

Q. Was there any person there keeping tally while you read off the ballots?—

A. Our township clerk and the clerk we appointed, Mr. Knapp.

Q. What were the arrangements there—where were you located, where were the clerks located and the ones reading them?—A. Sometimes the one that was

reading the ballots sat here [indicating] and the two clerks sat on this side facing the table, facing each other.

Q. The one that was reading and tallying?—A. Yes, sir.

Q. How long did you engage in the counting of the ballots there before there was any interruption?—A. I didn't get the meaning of that question.

Q. How long was the board engaged in counting those ballots before they stopped?—A. Well, from the time we commenced the count until about 1 o'clock, I think.

Q. How long have you been a justice of the peace in that township?—A. This is my second term; I have one year yet.

Q. How long have you lived in that precinct—in that township?—A. All my life except about a year and a half.

Q. What is your age?—A. I am 51.

Q. You are acquainted, I suppose, in that township?—A. Pretty well acquainted; yes, sir.

Q. Were there any persons that voted at that election at that precinct that were not resident electors of that township on that day?

Mr. ADAMS. I object to that as incompetent and as calling for the conclusion of the witness.

A. I think not.

Q. You say you counted up until about 1 o'clock at night?—A. Yes, sir.

Q. Then what did you do?—A. Well, we quit.

Q. What did you do with the ballots?—A. We put the ballots we had counted in the bottom of the ballot box and the ballots we had not counted we rolled up and tied up and put in the box with the ballots that had been counted.

Q. On top of those that had been counted?—A. Yes, sir.

Q. What did you do with the tally sheet, the tally books?—A. We put them in the ballot box.

Q. Was the ballot box locked?—A. Yes, sir; it was.

Q. Then what did you do?—A. Well, we went out and went up to the clerk's office, Mr. Mapes, and from there over to the barber shop.

Q. Then where?—A. We had been in the barber shop probably a couple of minutes, when we had orders to go at it and count the votes.

Q. Then where did you go?—A. To the telephone office from there; Mr. Hunter and I; I had to call Mr. McPeck, the prosecuting attorney, to see if we would have to go back and count the ballots. Of course, he said we had to—

Mr. ADAMS. I object to that as hearsay.

Q. You were advised by the prosecuting attorney, were you?—A. Yes, sir.

Q. Where did you go?—A. Well, I went back; that is, after I called Mr. Palmer and Mr. Knapp and told them to go back, they had telephones, then I went over there and from there to the justice of the peace, Mr. Bacon, and notified him.

Q. Did the board assemble?—A. All but Mr. Palmer.

Q. What did he say?—A. He says, "I will be there in a few minutes."

Mr. ADAMS. I object to what Mr. Palmer said as hearsay.

Q. Did he come back at all?—A. He came back about 5 o'clock the next morning.

Q. He didn't return to the booth until 5 o'clock in the morning?—A. About 5 o'clock.

Q. What did the rest of you do?—A. We proceeded to count the ballots.

Q. Who proceeded?—A. The two clerks, Mr. Bacon and myself; we counted the ballots and the two clerks tallied them.

Q. Who did the reading of the ballots from that time?—A. Part of the time I read ballots and part of the time Mr. Bacon did.

Q. When one of you were reading ballots, what did the other do?—A. He would look them over.

Q. What time did you complete the count?—A. Well, it was 5 o'clock or a little after; we had three ballots to count when Mr. Palmer got back.

Q. Did you complete the count when he got there?—A. We did.

Q. What was done when you got the count completed?—A. Well, we figured it up and made an announcement of the vote.

Q. The result of the election?—A. The result of the election; yes, sir.

Q. Do you remember about what time it was?—A. I couldn't say exactly, but I think somewhere about half past 5; maybe a quarter to 6 o'clock in the morning.

Q. Who was present when that announcement was made of the result of the election?—A. The board and Henry Bera came in and there was another man in there, his name was Campbell; further than that I couldn't say.

Q. Was this election precinct open while you were counting so that anyone who desired might come in and see you count?—A. They could come in but they could not get in where we were.

Q. They could come in where they could see you counting?—A. Yes, sir.

Q. But not behind the railing?—A. We didn't allow them in there.

Q. Did you see different people in the room, while you were counting, after you returned?—A. There were two or three came in; it was a very rainy night.

Q. When you returned what was done; were they finished up that night before you adjourned?—A. No, sir.

Q. Where did you go to sign up the returns?—A. To Mr. Bacan's office.

Q. Were the boxes sealed after you got through with the election?—A. Not that morning.

Q. Were they locked?—A. They were.

Q. What was put in the boxes?—A. Well, the ballots that had been used and the ballots that had not been voted were all put in the boxes.

Q. How were they prepared to put in those boxes?—A. Well, the ballots that had been used were put in the bottom of the box and the other ballots were put in on top.

Q. Were they rolled up?—A. I couldn't say as to that now, whether after we finished whether they were rolled or not.

Q. How were they as to being rolled up when you quit there about 1 o'clock at night?—A. The ballots that had not been counted I took them and rolled them up in a roll and tied them up and put them in the box.

Q. When you reconvened after you had been advised by the prosecuting attorney, how did you find the ballots as compared with the way they were when you left?—A. We found them just the same.

Q. Had they been disturbed?—A. No, sir; they had not.

Q. Witness, what have you to say as to those ballots having been correctly read when you were reading them off for the purpose of counting them?—A. I think they were correctly read.

Q. What have you to say as to whether all the ballots that was in that box that were cast for the contestant, Claude S. Carney, were read for him?—A. They were; he could not have got any more.

Q. What have you to say as to whether any more were read for John M. C. Smith than had been cast for him at that election?—A. I think I would be safe in saying there were no more.

Q. You think that each one received credit for all the votes that were cast for him?—A. I do.

Cross-examination by Mr. ADAMS:

Q. You have been acting as justice of the peace over there how long?—A. Well, seven years about.

Q. You are on your second term then?—A. Yes, sir.

Q. Your term is a four-years' term—A. Yes, sir.

Q. How many years have you been acting as justice of the peace on your second term?—A. It will be two years the 4th day of next July.

Q. Your term expires one year from July, 1913?—A. Yes, sir.

Q. Did you qualify as a justice of the peace this last term you have been endeavoring to fill that position?—A. I did.

Q. Where did you qualify?—A. In the village at Sunfield.

Q. Before whom?—A. Before the township clerk.

Q. What was his name?—A. Mr. Bastien, I think, was clerk at that time.

Q. What is his first name?—A. Ransom.

Q. After you qualified at that time, did you resign your office as justice of the peace?—A. I did not.

Q. You said you were present when the board organized?—A. I was.

Q. Who else was present there at the time the board organized on the 5th day of November at the township of Sunfield?—A. The rest of the board were there.

Q. Who else, give their names, I want the names of those who were there at the time that the election board organized on the morning of the 5th day of November, 1912?—A. John Palmer, Harry H. Mapes, H. Shaver, D. W. Knapp, Albert Sayer, Frank H. Bacon and myself, and I think Alvin High was there; I think he was one of the gatekeepers.

Q. You were a Republican at that time?—A. I always have been.

Q. You were on that day, election day, a Republican?—A. Yes, sir.

Q. You say that Mr. Bacon administered the oaths to the other members of the election board on that day and the gatekeepers?—A. Yes, sir.

Q. In your presence?—A. Yes, sir.

Q. You were there when it was done?—A. Yes, sir.

Q. All the time when that was being done?—A. Yes, sir.

Q. You say that you administered the oath to Mr. Bacon that day?—A. I think I did.

Q. Are you sure? Do you want to swear now that you did?—A. I am quite positive that I did.

Q. You take your oath here now, do you, that you administered the oath to Mr. Bacon for him to act as inspector of that election on that day, do you?—A. No; I wouldn't take my oath to that, but I think I did.

Q. You signed the certificate to that effect, did you, that you did administer that oath?—A. I think I did.

Q. You are pretty sure about that?—A. I would not be sure about it.

Q. Will you swear that you did?—A. No, sir; and I wouldn't swear that I did not.

Q. You are pretty positive you did?—A. Yes, sir.

Q. You are as positive of that as you are that you administered the oath to Mr. Bacon on that day?—A. I will not say that I did either one now, but I think I did.

Q. Your best recollection is that you did?—A. Yes, sir.

Q. That is your best recollection, that you administered the oath to him and that you signed the certificate showing that you administered the oath to him, Frank H. Bacon, to act as an inspector of that election in that township on that day, eh?—A. Well, I think I did.

Q. I show you Exhibit 13 and call your attention to pages 2 and 3 of that exhibit. Will you testify now whether there is any certificate on those two pages anywhere in that exhibit which shows that you administered any oath to Frank H. Bacon on that day to act as an inspector of that election?—A. It is not there; no, sir.

Q. None of those oaths on this exhibit I have just called your attention to were, as a matter of fact, signed by any of the officers at that election, including the clerks, on the 5th day of November, 1912, were they?—A. I think not.

Q. Those oaths on that Exhibit 13, to which your attention is directed, were signed by J. H. Palmer, Dennis A. Hagar, Harry H. Mapes, and D. W. Knapp on the 6th day of November, 1912, for the first time, is that correct?—A. I think so.

Q. As appears by this Exhibit 13, the only men that signed any oath on that day, the 6th of November, 1912, were J. H. Palmer, Dennis A. Hagar, H. H. Mapes, G. W. Knapp, and Charles Gilbert as gatekeeper, and Z. D. Slater as gatekeeper and Albert Sayer as instructor, is that correct?—A. I think so.

Q. And as appears by this Exhibit 13, the names I have just read in my last question, or called your attention to in my last question, are the only men as appears by this Exhibit 13 who took any oath to fill any of the positions in the conduct of that election on that day of the 5th of November, 1912?—A. I think so. I know Mr. Bacon was put under oath, but he didn't sign it, that is all.

Q. You said you adjourned for one hour at noon?—A. Yes, sir.

Q. On the 5th?—A. Yes, sir.

Q. All of you left the place where you were holding that election and went out to lunch?—A. No, sir.

Q. Except one man?—A. Yes, sir.

Q. And that one man was who?—A. Z. D. Slater.

Q. Z. D. Slater was a gatekeeper at that election?—A. Yes, sir.

Q. He was not an inspector?—A. No, sir.

Q. He was not a member of the board of election?—A. No, sir.

Q. And the Slater you referred to in this last answer, or in the last answer in which you used the name of Slater, was the Z. D. Slater who signed the certificate or oath on page 4 of Exhibit 13, was he not?—A. Yes, sir.

Q. That is the same man?—A. Yes, sir.

Q. And that Z. D. Slater whose name appears to that certificate on page 4 of Exhibit 13 as having taken the oath of gatekeeper was the man you left in that voting place with that ballot box and everything else when you went to lunch at noon on the day of the 5th of November?—A. Yes, sir.

Q. Did Slater go to lunch that day at noon?—A. I don't know whether he went before or after—in the noon hour, someone came back—one of the clerks of the board. I don't remember who took his place——

Q. You were not there then, were you?—A. No, sir.

Q. How do you know he came back?—A. He was back when I came back.

Q. The most you can say is that you found one of the clerks there when you got back?—A. Yes, sir; William Knapp said——

Q. I don't care what he said, I want your knowledge, not what he said. When you got back from your noon lunch on that day, you didn't find Slater there?—A. No, sir; I think it was Mr. Knapp that was there.

Q. What Knapp?—A. William Knapp.

Q. Was that D. W. Knapp?—A. Yes, sir; I think he was the man that was there.

Q. Then Slater was gone when you got back from lunch. He was not there at the voting place?—A. No, sir.

Q. When did Slater get back?—A. He got back before we opened the polls, or by the time we opened the polls at 1 o'clock.

Q. Where did you go to lunch that day?—A. I went up to my father's; he lives in the village.

Q. Did you live in the village then?—A. No, sir; I don't live there now; I never did.

Q. How far did you live from Sunfield on that election day?—A. Four miles.

Q. What did the board do when it adjourned for that noon at lunch, if it adjourned?—A. What did the board do?

Q. Yes, sir.—A. They went and got their dinners, I guess.

Q. What was said about adjournment, if anything?—A. We adjourned for one hour.

Q. Who made the adjournment?—A. I don't remember whether Mr. Palmer or myself; I don't just remember.

Q. What was said about adjournment? Tell me what was said.—A. We called at 11 o'clock—we called an adjournment for one hour—called it from that time until 12 o'clock, and at 12 o'clock we called an adjournment.

Q. You called it, you say, from 11 o'clock—how many times did you call it from 11 o'clock until you finally adjourned?—A. Eleven, half past 11, 15 minutes to 12, and at 12.

Q. What did you say at 12 o'clock—what was said about an adjournment? Give me the words as near as you can.—A. "Hear ye, hear ye, the polls of this election are closed for one hour."

Q. Who did that?—A. I couldn't say whether myself or Mr. Palmer.

Q. Were you there when the announcement was made?—A. Yes, sir; I was.

Q. You got back about 1 o'clock?—A. I got back to the voting precinct before 1 o'clock.

Q. What was done in the way of opening the polls?—A. We called the opening of the polls.

Q. Who called it?—A. I think Mr. Palmer.

Q. What did he call?—A. He called, "The polls of this election are now open."

Q. You were there when he called it?—A. Yes, sir.

Q. Who else were there of the men who had been acting in the conduct of that election before you took your adjournment at noon?—A. I think they were all there.

Q. Tell who they were.—A. I think they were all there.

Q. Was Mr. Sayer there?—A. I think so.

Q. Well, now, had you all been there all the morning—I mean all you fellows who were having something to do with the conduct of the election? Did you stay there from the time you opened the polls, all of you, until you took the next adjournment?—A. We all did but Mr. Palmer; you couldn't keep him there.

(Whereupon the hearing was adjourned until 1 o'clock p. m.)

DENNIS A. HAGER, recalled for further cross-examination by Mr. Adams, testified as follows:

Q. When you went away to your noon luncheon on election day from that voting place what was done with the election books?—A. I think they were left on the table.

Q. When you got back from your lunch—the noon lunch that day—to the voting place the books were still on the table?—A. They were.

Q. Who had the key to the ballot box?—A. I think Mr. Knapp.

Q. You say you think. Do you know whether he had or not?—A. I wouldn't swear positively, but I think he had it.

Q. Do you know whether the ballot box was locked when you left for your noon lunch that day?—A. It had not been unlocked from the time we locked it in the morning.

Q. Do you know that it was locked of your own knowledge?—A. I didn't see it locked.

Q. You didn't?—A. No, sir.

Q. Now to go back—the polls opened up, you testified, at 1 o'clock. Were all those who were officers of any character in that election that day there when you opened up after the noon lunch?—A. Yes, sir; at 1 o'clock.

Q. Then you kept the polls open until 5 o'clock that day?—A. Yes, sir.

Q. Now, did any one of the officers of that election—any of the inspectors—I will change the question. Did any of the inspectors, after you opened the polls at 1 o'clock that afternoon leave the polling place up to the time that the polls closed at 5 o'clock that afternoon?—A. They did.

Q. Who?—A. Mr. Palmer.

Q. Did any others, or other one or ones, of the inspectors go out besides Mr. Palmer?—A. Not that I recollect of now.

Q. You didn't leave the polling place?—A. I couldn't get away. I couldn't keep Mr. Palmer there long enough so I could get away.

Q. Whether you could keep him there or not, the question is, Did you leave after you came from the noon lunch and the polls opened at 1 o'clock up to the time the polls closed at 5 o'clock that day?—A. I might have went out to draw water or something like that; I don't remember as to that.

Q. You don't remember whether you did or not?—A. No, sir; I couldn't say whether I did or not.

Q. How many times did Mr. Palmer go out that afternoon before 5 o'clock?—A. I couldn't tell you that; I couldn't say. He would go out and be gone awhile, and come back and stay a few minutes and be gone again.

Q. In other words, as I take it from what you say, he was out rather more than in after 1 o'clock up until 5 o'clock?—A. I should say so; yes, sir.

Q. Didn't some of the other inspectors go out any that afternoon besides yourself and Mr. Palmer?—A. They might have; I couldn't say.

Q. I understood you to say that there were no excess of votes in the ballot box, no more votes than your box showed had been cast?—A. I think they tallied up exactly; I think so.

Q. At 5 o'clock—when 5 o'clock came—what did you do to close that election, if anything?—A. We called the election closed; gave the call.

Q. Was 5 o'clock the first call you gave?—A. No, sir.

Q. When did you first call?—A. Four o'clock.

Q. When next?—A. A quarter past 4.

Q. When next?—A. Half past 4.

Q. Then 5 o'clock?—A. Yes, sir.

Q. Was the voting then stopped?—A. There was no one there to vote.

Q. The question is whether when 5 o'clock came you made the last call and the vote was then stopped?—A. There was no one there to vote.

Q. There were no people in there to vote then?—A. No, sir.

Q. How long before 5 o'clock do you say the last vote was deposited in the ballot box that was cast there that day?—A. I couldn't say.

Q. Can you remember now by thinking of it?—A. I can't.

Q. Do you remember who was the last man to vote?—A. I couldn't say.

Q. When you closed the polls, what did you do?—A. Why we opened the box—

Q. Right away?—A. Pretty soon; yes, sir.

Q. How many ballot boxes did you have there that day?—A. We had to have two.

Q. How many did you have?—A. We had three ballot boxes, two for the general election and one for the suffrage vote.

Q. You voted for suffrage up there, did you?—A. Yes, sir.

Q. Which ballot box did you open first when you began counting the ballots?—A. We opened the last one we used; it got so full we could not get any more ballots in, and we took the other one.

Q. You used two ballot boxes in which the tickets for Congressmen were deposited during the carrying on of the election there?—A. Yes, sir.

Q. One of them got full and you used another?—A. Yes, sir.

Q. About when in the day did you begin using the second one in which you deposited the vote for Congressmen?—A. Well, now, I couldn't say exactly.

Q. Have you any idea?—A. I think it was a little before noon, or might have been afternoon; I couldn't say.

Q. Was the second box you used for depositing the votes for Congressmen as full as the first one you used in which the votes for Congressmen were deposited?—A. Well, I don't think there was a great lot of difference; they were pretty well filled up, both of them.

Q. I show you what is marked "Exhibit 3," statement book of the general election held on Tuesday the 5th day of November, 1912, at the village hall, township of Sunfield, county of Eaton, Mich., and call your attention to page 16, to the heading there "certificate." You notice the names J. H. Palmer, Frank H. Bacon, and Dennis A. Hager, signed there, inspectors of election; is that your signature there—Dennis A. Hager?—A. Yes, sir.

Q. You signed it there, did you?—A. Yes, sir.

Q. I notice that certificate is dated, "this 5th day of November, 1912?"—A. Yes, sir.

Q. It was not made out on that day, was it?—A. Yes, sir; it was made out on the 5th.

Q. When was it made out on the 5th?—A. Whenever we would have a little time we would fill this in there.

Q. Did you see that certificate made out on the 5th day of November, 1912, to which your attention is now directed?—A. I couldn't swear I did; I saw the boys working on the books, the clerks.

Q. You don't know whether the clerks filled that certificate out to which your attention is now directed, on the 5th day of November, do you?—A. I wouldn't swear it was.

Q. It was not signed on the 5th day of November?—A. I don't think so.

Q. You know it was not?—A. No.

Q. It was signed on the 6th?—A. Yes, sir.

Q. About 9 o'clock on the morning of the 6th of November, 1912?—A. I couldn't say just exactly what time it was; it was on the 6th.

Q. At Mr. Bacon's office it was signed, was it not; you signed it there?—A. I think so.

Q. Do you know where Mr. Palmer and Mr. Bacon signed it, did you see them sign it?—A. I don't remember that I did.

Q. Is that your best recollection that you didn't see Mr. Palmer and Mr. Bacon sign that certificate, that your attention has been directed to?—A. Well, now, I couldn't say as to that; I saw Mr. Bacon sign some of these statement books there in his office the next day after the election; I couldn't say which ones they were.

Q. I call your attention again to Exhibit 13, which is the same exhibit I called your attention to this forenoon and is the poll book of the election held in Sunfield Township November 5, 1912, and especially direct your attention to page 16 of this exhibit. I notice to the certificate of inspectors on the last page of that exhibit your name or the name of Dennis A. Hager signed; is that your name?—A. Yes, sir.

Q. As one of the inspectors?—A. Yes, sir.

Q. That certificate appears to have been made out according to this exhibit on the 5th day of November, does it not, dated November 5?—A. Yes, sir.

Q. It was not signed on November 5, was it?—A. I think probably not.

Q. You are sure it was not signed on the 5th?—A. I think I signed these books on the 6th.

Q. You signed that exhibit as an inspector of that election on the 6th day of November, 1912, didn't you?—A. I think so.

Q. Is it not a fact, of your own knowledge, that Mr. Palmer and Mr. Bacon also signed that same certificate on this exhibit not the 5th day of November, 1912, but on the 6th of November, 1912, in the morning?—A. I couldn't say.

Q. Did you see them, or either of them, sign that particular certificate?—A. I couldn't say.

Q. You signed all the books there that day, you and the inspectors, did you, that were there for you to sign, and that had a place for you inspectors to sign, I suppose?—A. I suppose we did.

Q. You saw those books there, I suppose, on that 5th and 6th days of November, 1912, did you?—A. I saw them, yes, sir; they were there.

Q. Now I show you Exhibit 24, which is a statement book of the general election held in this township of Sunfield November 5, 1912, and call your attention

to the certificate on page 16 of this particular exhibit; it is not filled out at all, is it?—A. It is not.

Q. So the board of inspectors didn't fill that certificate out and didn't sign it; did you?—A. It doesn't look like it.

Q. That is a fact; that is what that exhibit shows, isn't it? Will you please examine this exhibit which is now before you, Exhibit 24, statement book of the general election held November 5, 1912, of the township of Sunfield, and state whether you can find any certificate of the inspectors of that election made out and filled out or any sort of a certificate on that exhibit made by the board of inspectors of that election held there on that day?—A. I don't find any; no, sir.

Q. There is a blank form of certificate on page 16 of this Exhibit 24, isn't there, where the inspectors of election were expected to fill that out, isn't there, on page 16?—A. Yes, sir.

Q. It is blank, isn't it; absolutely blank?—A. Yes, sir.

Q. The first ballot you counted when you closed the polls at 5 o'clock that day were the ballots for the candidates for the office of Representative in Congress, governor of the State of Michigan, presidential electors, and county officers?—A. The first votes we counted?

Q. Yes sir.—A. Yes, sir.

Q. Was Mr. Palmer there when you began counting?—A. I think he was.

Q. Were you there when you began counting after the polls closed, when the counting commenced at 5 o'clock?—A. Yes, sir.

Q. Was Mr. Bacon there when you began counting after the polls closed?—A. I think we were all three there at that time.

Q. Were the clerks of that election also there at the time you began that count?—A. They were; yes, sir.

Q. Did you go away after you began counting the ballots for supper that night?—A. I did.

Q. Did the other members of the board go away for supper?—A. Not at the same time.

Q. Was Mr. Palmer there when you left for supper?—A. Yes, sir.

Q. Was Mr. Palmer there when you got back from your supper?—A. Yes, sir.

Q. Was Mr. Bacon there when you left for supper?—A. Yes, sir.

Q. Was he there when you got back from your supper?—A. Yes, sir.

Q. Were both of the clerks there when you left for supper?—A. Yes, sir.

Q. Were both of the clerks there when you got back from your supper?—A. Yes, sir; they were.

Q. After you got back from your supper, state whether either of the other of the inspectors went to supper.—A. Mr. Bacon went; I don't know whether Mr. Bacon went before I did or after.

Q. Mr. Bacon went to supper, anyway?—A. Yes, sir.

Q. Did Mr. Palmer go to supper?—A. I think he went to supper before; I think he had an early supper.

Q. Before you did?—A. Yes, sir.

Q. When Mr. Palmer was away to supper on the 5th day of November, did you remain there until Mr. Palmer got back?—A. Yes, sir.

Q. Was Mr. Bacon there when Mr. Palmer left for supper?—A. He was there when Mr. Palmer was not there; yes, sir.

Q. All the time?—A. All the time.

Q. Well, they kept right on counting, I suppose?—A. Mr. Palmer and Mr. Bacon, while I was gone to supper, counted.

Q. You didn't count those ballots they counted while you were away?—A. No, sir.

Q. You don't know anything about those ballots, whether they were counted correctly or not?—A. I couldn't say; I presume they would be, though.

Mr. ADAMS. I move to strike out what the witness presumes; I ask for the facts.

Q. How many ballots were counted at the time you left to go to supper on the 5th day of November, do you remember?—A. I couldn't say for the number; no, sir.

Q. Well, when you got back from your supper you found that they had counted quite a number of ballots while you were gone?—A. Not a great many.

Q. How long were you gone?—A. Long enough to go to the restaurant, and eat my supper and get back.

Q. How long were you at supper?—A. Probably 15 or 20 minutes.

Q. They had counted some ballots?—A. Yes, sir.

Q. You never did count the ballots that were counted while you were to supper that night?—A. No, sir.

Q. You didn't look them over?—A. No, sir.

Q. When Mr. Palmer was out you kept on counting just the same, didn't you?—A. Yes, sir.

Q. When he went to supper?—A. I don't know whether Mr. Palmer had supper before we commenced counting or not; he had an early supper. I don't remember whether before or after I went to supper.

Q. If Mr. Palmer went out to supper after 5 o'clock you and Mr. Bacon kept right on counting the ballots while he was out to supper?—A. Yes, sir.

Q. Mr. Palmer didn't count those ballots that were counted in his absence?—A. No, sir.

Q. As far as you know?—A. No, sir.

Q. When Mr. Bacon was out to supper, you and Mr. Palmer and the clerks were counting ballots?—A. Yes, sir.

Q. Mr. Bacon didn't count those ballots that you and Mr. Palmer and the clerks counted when Mr. Bacon was out to supper?—A. No, sir.

Q. Well, I suppose Mr. Palmer went out to take a smoke once in a while after you had all been to supper; he didn't stay there all the time?—A. I think he was there from the time we got our supper until we quit counting.

Q. Did you remain all that time, too?—A. Yes, sir.

Q. Did or did not Mr. Bacon remain during all that time?—A. He did; I don't think he was out of the place.

Q. Did the clerks remain, too, from the time you all got your supper?—A. I am quite positive they did.

Q. I suppose those clerks went out and got some supper?—A. When I went to supper they said they were going to have their supper brought to them.

Q. I don't care what they said; I want to know whether you know whether either of those clerks, after you began counting, after the polls closed at 5 o'clock that day, went out of that place where you were counting those votes at any time or times, up to the time you adjourned that night and went over to the barber shop.—A. I couldn't say positively.

Q. Well, it ran along up to what hour did you say when you adjourned at night?—A. Somewhere about 1 o'clock.

Q. On the morning of the 6th of November?—A. Yes, sir.

Q. You were not through counting the ballots at the time you adjourned, were you?—A. No, sir.

Q. How many ballots had you counted up to that time; do you remember?—A. I couldn't say.

Q. Did you have about half of them counted—of the votes cast there that day, I mean now? This question refers to those ballots that were cast for Representative in Congress; I don't care about the suffrage ballots.—A. We took out the straight votes, then, I think, the split tickets, we probably had, well, maybe, somewhere toward half of them counted; I couldn't say for sure.

Q. About half of the straights?—A. Of the splits, somewhere along there, I couldn't say exactly.

Q. You had, when you adjourned at 1 o'clock on the morning of the 6th of November, about one-half of the split ballots counted?—A. We might have had more than half and maybe not half, I couldn't say.

Q. Of the split ballots that were on the general ticket?—A. Yes, sir.

Q. On which the candidates for Representatives in Congress were?—A. Yes, sir.

Q. Of those ballots, you had about that many counted?—A. Yes, sir.

Q. When you adjourned about 1 o'clock on the morning of the 6th, had you counted the straight ballots for Representative in Congress?—A. We counted them first.

Q. When you adjourned at 1 o'clock or about 1 o'clock on the morning of the 6th, state whether all the inspectors were there at the time of the adjournment.—A. They were all there except Mr. Sayer; he might not have been there.

Q. Mr. Sayer?—A. Yes, sir; he was one of the inspectors, not inspector, he was an instructor.

Q. He was not there anyway?—A. I couldn't say whether he was or not, I am not sure.

Q. Was Mr. Palmer and Mr. Bacon there at that time?—A. Yes, sir.

Q. And you were?—A. Yes, sir.

Q. Were the two clerks there?—A. Yes, sir.

Q. What did you do there to make that adjournment?—A. Well, some one spoke and said, "Let's quit until morning." I think Mr. Palmer. Mr. Bacon was almost sick and hardly able to sit up, and he says, "It doesn't seem as though I could stay here any longer," he says, "Let's quit." So we quit.

Q. That is all there was to it?—A. Yes, sir.

Q. All the announcements that were made?—A. Yes, sir.

Q. There were some people, I suppose, around there?—A. I don't remember of any.

Q. I mean some one besides you gentlemen who were conducting the count; were there some of the citizens around there?—A. I don't recall that there was.

Q. Then you closed up?—A. We closed up.

Q. What did you do?—A. We took the ballots and put them in the box; as fast as we counted the ballots we put them in the ballot box and straightened them out and laid them in straight and took the ballots that were not counted and rolled them up in a roll and tied them up and put them in this ballot box.

Q. Who unlocked that ballot box when you began counting ballots at 5 o'clock?—A. Mr. Knapp opened the box.

Q. Did you see him open it?—A. Yes, sir.

Q. Did he unlock it?—A. He opened the box.

Q. Did you see him unlock it with a key?—A. I may not just have seen him unlock it, but I was there when he opened it.

Q. Was the box locked when you quit that night?—A. There was a lock on it.

Q. Was it locked?—A. It must have been locked.

Q. Was it locked?—A. I think it was.

Q. Did you see anybody lock it?—A. I did not.

Q. Then, you don't know of your own knowledge whether it was locked or not?—A. I didn't see it locked; the lock was on there, and I saw the lock hanging on the box.

Q. It was not sealed?—A. No, sir; it was not.

Q. Do you know who had the key to the ballot box?—A. I think Mr. Knapp had the key.

Q. Do you know?—A. I don't know.

Q. What did you do with the books you had there?—A. We put them in the box with the ballots.

Q. Was there room in the box for the books?—A. Yes, sir; we laid them in on top of the ballots.

Q. Didn't some of the clerks or inspectors take away any of those books that night?—A. I don't know as they did.

Q. Do you know they didn't?—A. I couldn't say; I don't think they did, though.

Q. You left the ballot boxes there?—A. Yes, sir.

Q. And you all went out and left?—A. Yes, sir.

Q. And turned out the lights?—A. Yes, sir.

Q. This place that this election was held in was in the township hall?—A. Yes, sir; the village hall.

Q. That is where the fire department has its place?—A. Yes, sir.

Q. The fire apparatus or whatever you have there was kept there?—A. Yes, sir.

Q. This election was conducted in a room where the fire apparatus was, was it not?—A. It was in the room, but there was a railing across that divided it.

Q. Where you had it railed off for your voting place there—where you held your election that day—it was simply railed off?—A. Yes, sir.

Q. A railing, 3, or 4, or 5 feet high?—A. Yes, sir.

Q. There was nothing to prevent anybody from going from the other part of that room into where these ballot boxes were?—A. No, sir.

Q. They could climb the railing?—A. Yes, sir.

Q. Or they could go under it?—A. No, sir.

Q. Was it boarded up?—A. Yes, sir.

Q. There were some gates?—A. Yes, sir; at each end.

Q. They could walk in the gates?—A. Yes, sir.

Q. Nobody was left there in charge of those ballot boxes, or whatever your election board left there when you left—at the time you left that night or the morning of the 6th?—A. There was not; no, sir.

Q. You didn't go back there on the morning of the 6th, did you, or did you go back to that same place again the morning of the 6th; you did, I believe?—

A. I went back, yes, sir, when we went back to count.

Q. When you left there, about 1 o'clock, you all left and went out of the building and left the boxes and books and everything there; where did you go?—A. The first place we went to Mr. Mapes; and I went up to the clerk's office—the town clerk's office—and we went from there over to the barber shop where they were getting the election returns.

Q. How did you happen to go to the township clerk's office?—A. He had the primary registration list; that is, the registration book that he took over; and he said he would have them to his office that night.

Q. Did he go with you over to the barber shop?—A. Yes, sir.

Q. You went to the barber shop and was in there how long?—A. Probably we were in there I don't think over 15 minutes or such a matter.

Q. They were getting the election returns there that night?—A. Yes, sir.

Q. I suppose that is what you went there for?—A. Yes, sir.

Q. You got some returns while you were there; heard some returns?—A. We heard some returns, not much.

Q. How did you come to leave there so soon?—A. Well, a man that was there he telephoned, he said, and got word from Charlotte that we should go back and count the votes. They had telephoned to Charlotte, I think maybe to Mr. McPeck, the prosecuting attorney, and he sent word that we should go back and go to counting. So we talked it over and I says—Mr. Hunter was there then, and I says: "I am going over and call the prosecuting attorney and see whether we have to go back and count those votes." We went to the telephone office and Mr. Hunter says, "I will call him for you."

Q. You went to the telephone office and telephoned to Charlotte?—A. I didn't telephone.

Q. Somebody did?—A. Yes, sir; Mr. Hunter did for me.

Q. How long were you in telephoning; half an hour?—A. No, sir.

Q. Twenty minutes?—A. I couldn't say; I didn't keep track of the time; only a short time.

Q. Your best judgment, would you say 15 minutes you were there?—A. Might have been 10, maybe not that long.

Q. When you left the telephone office where did you go?—A. After I left the telephone office I went and notified Mr. Bacon.

Q. Where did you go, to his house?—A. Yes, sir; I only had to go about half a block out of the way to get to his house.

Q. Was he in bed?—A. No, sir; he was up.

Q. Did he go up with you?—A. Yes, sir; I just got back there and he put his coat on and came right up.

Q. Where did you go after you went to Mr. Bacon's office?—A. I went to the village hall.

Q. Did you get any word to Mr. Palmer?—A. Yes, sir.

Q. Where from?—A. From the telephone office.

Q. How did you get the other clerk back there?—A. He had a telephone and I called him from the telephone office.

Q. How soon did he get there?—A. He was there just going into the town hall door as I got back from notifying Mr. Bacon; I don't think he had got into the hall yet.

Q. You went into the hall yourself?—A. Yes, sir.

Q. Who went there with you from the barber shop?—A. Mr. Mapes, the township clerk.

Q. Mr. Palmer didn't show up until pretty well toward 5 o'clock in the morning?—A. About 5 o'clock; yes, sir.

Q. So after you adjourned about 1 o'clock Mr. Palmer was not there until somewhere about 5 o'clock in the morning?—A. Five o'clock maybe, about 5 o'clock; somewhere along there.

Q. What time did you begin your count after you had been over to the barber shop?—A. I couldn't say exactly; I think probably before 2.

Q. How much before 2 o'clock?—A. I couldn't tell you.

Q. Give your best recollection; did you have a watch to look at to see what time you commenced?—A. I had no watch and there was no clock in the hall that I saw.

Q. Give me your best recollection about what time you commenced counting after you got back from the barber shop?—A. Perhaps between 1 and 2 o'clock as near as I can tell.

Q. Did you and Mr. Bacon stay there until Mr. Palmer got there in the morning, all the time?—A. Yes, sir.

Q. Were the two clerks there at all, and was Mr. Mapes and Mr. Knapp there at all until Mr. Palmer got there at 5 o'clock in the morning?—A. Mr Knapp was there.

Q. Was Mr. Mapes there?—A. No, sir.

Q. Who went at 1 o'clock?—A. The township clerk and Mr. Bera stepped in and took his place.

Q. Who was that?—A. Mr. Bera.

Q. When did he first begin to help there?—A. It was just before we got through; probably we had 10 or 12 ballots to count.

Q. Was that the first he had done in the way of helping with the count there?—A. I think so; I will not be positive.

Q. He had been around this railing some that day, had he?—A. I think not; only when he went through to vote.

Q. Aside from that time down he had been helping some there?—A. I don't think it; I don't recollect that he had; I don't remember.

Q. Was he the postmaster?—A. Yes, sir.

Q. He had been postmaster there in Sunfield for quite a number of years?—A. A number of years; yes, sir.

Q. Some 10 or 12 years, anyway?—A. I couldn't say how long.

Q. Well, anyway, Mr. Mapes was not there from the time you went back from the barber shop and began counting, up to the time that Mr. Palmer got there in the morning, was he?—A. Yes, sir.

Q. When did Mr. Mapes leave, then?—A. He left probably half or three-quarters of an hour before we got through in the morning; went back and stayed probably half an hour and maybe three-quarters of an hour before we got through.

Q. Then he left?—A. And Mr. Bera took his place.

Q. Was Mr. Bera there at the time Mr. Mapes left?—A. I think so; yes, sir.

Q. How long had Mr. Bera been there?—A. He just came in.

Q. How long before Mr. Mapes left did Mr. Bera come in?—A. Just a short time.

Q. An hour?—A. Oh, no.

Q. Half an hour?—A. Probably 5 or 10 minutes, something like that.

Q. Do you know how Mr. Bera happened to come there; did you send for him?—A. No, sir; a man got killed there on the railroad that night and he was down there. I am not positive, I don't know where he came from, but I think he came from the court and dropped in.

Q. When Mr. Palmer got there in the morning, you had only about three to six ballots to count yet?—A. Two or three.

Q. So that in Mr. Palmer's absence from the time he left that voting place about 1 o'clock on the morning of November 6, up to about 5 o'clock of the morning of November 6, 1912, you had counted quite a large number of the ballots for the different candidates for Representative in Congress?—A. Yes, sir; we counted some.

Q. Mr. Palmer did not at any time, up to the time you made your returns of that election, go over those ballots that you counted in his absence, did he?—A. He did not; no, sir.

Q. Nor Mr. Mapes didn't come back there again when he left there when Mr. Bera came?—A. No, sir.

Q. Up to the time you finished the count?—A. No, sir.

Q. D. W. Knapp was one of the clerks of that election?—A. Yes, sir.

Q. And H. H. Mapes was another clerk?—A. Yes, sir.

Q. Did you get all the ballots in the ballot box when you—in one ballot box—when you left that voting place and went over to the barber shop in the morning of the 6th?—A. Yes, sir.

Q. You put all the ballots in one box?—A. We laid them in the ballot box.

Q. And put the books in that same ballot box?—A. I think so; yes, sir.

Q. So one ballot box contained all the ballots that the two ballot boxes had contained during the time that the voting was going on, and also contained all the election books?—A. I think so; yes, sir.

Q. The other ballot box was not used at all then for holding any of the ballots or books of that election when you quit there and went over to the barber shop on the morning of the 6th?—A. I think not.

Q. When you got through counting over there on the morning of the 6th about 5 o'clock, what was done with the ballots and books?—A. The ballots were all put back in the box.

Q. And the books what was done with those, did the clerk take them?—A. I couldn't say whether the clerk took them then or not.

Q. Don't you know that the clerk did take some of those books at that time?—A. I think he might have; yes, sir, but I am not sure.

Q. Did you see the ballot box locked?—A. The ballot box was shut up; yes, sir.

Q. The morning of the 6th when you left the voting place?—A. Yes, sir.

Q. It was shut?—A. Yes, sir.

Q. Was it locked?—A. The lock was on the box.

Q. Was it locked?—A. I didn't see them lock it.

Q. You don't know whether it was locked or not?—A. I don't whether it was locked, I couldn't swear to that.

Q. Mr. Bacon's office was some little distance from where you had been carrying on this election on the 5th and 6th days of November, was it not?—A. A short distance.

Q. About how far?—A. It is probably one block north and something like half a block west.

Q. An altogether different and separate place from where the election was held?—A. Yes, sir.

Q. In another building entirely?—A. Yes, sir.

Q. How did you happen to go to Mr. Bacon's office?—A. Well, Mr. Bacon says, "You had better come over to my office and fill out these books, I have got a good place there and you had better come over there than stay here," and we went over to his office and filled out the books and made out the report.

Q. When you got over to Bacon's office, what time was it on the morning of the 6th, as near as you can remember?—A. Well, I went and got my breakfast, I think—I can't just tell.

Q. Approximately?—A. I think somewhere about 7 o'clock, maybe a little after, something like that; I went back home and got my breakfast and went back down.

Q. Was it not later now?—A. It might have been.

Q. Was it not nearer 9 o'clock?—A. I couldn't say as to that.

Q. Was Mr. Palmer there when you got to Mr. Bacon's office that morning?—A. I think not.

Q. How long was it after you got there that Mr. Palmer came?—A. I don't know.

Q. Did Mr. Palmer come while you were there?—A. He was in and out; yes, sir.

Q. Was Mr. Bacon at his office when you got there on the morning of the 6th?—A. I think he was; yes, sir.

Q. Was Knapp there at Bacon's office when you got there?—A. Yes, sir.

Q. Was Mapes there or did he come after you got there?—A. I couldn't say whether he was there when I got there or not.

Q. The election books were there when you got there?—A. I think they were.

Q. Who had them?—A. They were lying there on the table in Mr. Bacon's office.

Q. The ballot boxes were not there?—A. No, sir.

Q. You didn't see the books taken out of the ballot box the morning of the 6th at Bacon's office?—A. The ballot boxes were not there.

Q. They were over at the engine house at the town hall?—A. The boxes were; yes, sir.

Q. So that, as a matter of fact, when you quit over there on the morning of the 6th of November, 1912, it is a fact isn't it, that all the election books you had used there in conducting that election on the 5th and 6th days of November up to the time you adjourned or got through with the count and adjourned or quit on the morning of the 6th day of November, those books were not in the ballot box and locked up, were they?—A. At the time we quit?

Q. Yes; or any of them or none of them were?—A. In the morning?

Q. Yes; when you quit there.—A. I couldn't say.

Q. Well, in any event, they were over to Bacon's office?—A. Yes, sir.

Q. The ballot boxes were not at Bacon's office, but over where the election had been conducted?—A. Yes, sir.

Q. So somebody had taken them; they were not in the ballot boxes. If they had put them in they took them out and brought them over to Mr. Bacon's office?—A. I think the clerks took them with them when they left in the morning.

Q. You are pretty sure about that, are you? Don't you remember that you

saw the clerks have those books when you quit there?—A. I might; I don't recollect it just now.

Q. These books here that I am showing you now, Exhibits 24, 13, and Exhibit 3 and Exhibit 4 were the books that you had over to Mr. Bacon's office on the morning of the 6th?—A. Yes, sir; they are the same books.

Q. They are the same books you had over there where you held the election at the town hall, are they not?—A. They look like the same books.

Q. Was there a man named Campbell in the place where you held the election on the 5th, at any time, helping?—A. No, sir.

Q. Was he around there at any time when you were tallying?—A. He came in there sometime along in the afternoon, after we went back to count; he came in and sat down by the stove until morning. He didn't have any place to go, I guess. He sat down and stayed there by the stove until morning.

Q. There were some people in there when you quit counting about 1 o'clock on the morning of the 6th?—A. I don't recollect that there was.

Q. Were there or not?—A. I couldn't say.

Q. You don't remember?—A. I don't remember.

Q. You don't remember one way or the other?—A. No, sir; there might have been one or two and might not have been any; I couldn't say.

Q. When you stated that the ballots were correctly read, you don't know whether they were correctly read, do you? You don't know whether they were correctly read when you were not there; you would not have any knowledge about that, would you?—A. No, sir; they were both Democrats—

Q. (Interrupting.) I am asking you what you know.—A. No, sir.

Q. You don't know whether each candidate for Congress received credit for all and no more votes than were cast for him when you were not there?—A. I couldn't say.

Q. That you could not know anything about?—A. No, sir.

Q. When you got back there from the barber shop and commenced counting you didn't make any public announcement of the opening of the polls, did you, of the election when you resumed work by the election board?—A. I think not.

Q. When you went over to Mr. Bacon's office you didn't make any announcement that you had taken up the work of the election board again, did you?—A. I didn't know it was necessary to do that.

Q. Did you?—A. No, sir.

Q. When you got all through you didn't make an announcement of any kind at Mr. Bacon's office?—A. No, sir.

Q. When you got through with these books who took charge of them at Bacon's office?—A. We sealed them there in Bacon's office and put them in an envelope, and I don't know whether one or the other of the clerks took them and took them to the post office.

Q. Did you see them sealed?—A. Yes, sir.

Q. Who sealed them?—A. I helped to.

Q. How many did you seal?—A. We sealed the whole bunch.

Q. But how many?—A. Two bunches.

Q. You sealed all the books up you had there, did you?—A. We sealed up all the books that came here.

Q. What did you do with the others, if there were any others?—A. I think there is one book that the clerk keeps, if I mistake not; the rest were put in envelopes and sealed.

Q. The clerk did take away one or two of them, did he; that is your best recollection?—A. I wouldn't say.

Q. That were not sealed up?—A. I don't know whether he did or not.

Q. After you got through there at Bacon's office that morning you didn't see any book or books that you had used there in carrying on that election put in any of the ballot boxes that were used there on election day, did you?—A. After we got through at Bacon's office?

Q. Yes, sir.—A. No, sir.

Q. After you got through at Bacon's office you didn't see and don't know of the ballot boxes that were used there on election day being sealed, do you?—A. I should say they were sealed, but not that day.

Q. You didn't see any of them sealed before you left Bacon's office?—A. No, sir.

Q. That you had used in carrying on that election on the 5th and 6th days of November, did you?—A. No, sir.

Q. They were not sealed in the presence of the board at Bacon's office, were they?—A. They were not there.

Q. They were not sealed in presence of all the members of that board anywhere else that you know of, personally know of, were they?—A. No, sir; not that I know of.

Q. Where did you count those ballots there in the town hall on the 5th and 6th?—A. Right where we had our ballot boxes—on the table.

Q. I understood you, or got the impression from something you said, that people could not get in where you were counting?—A. They could climb over the railing or go through the gates; that is all the way.

Q. Were the booths up while you were counting?—A. Yes, sir.

Q. They had not been taken down?—A. No, sir.

Q. Did the booths in any way keep the public from seeing what was going on there with the count?—A. No, sir.

Q. The people could not get over the railing where you were counting?—A. They might have climbed over.

Q. I mean without climbing over or coming through the gates?—A. No, sir.

Q. How close to the railing were you carrying on the count?—A. Well, the end of the table probably was as far as from here to the wall.

Q. Two feet and a half or 3 feet?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Mr. Hager, did you see or know of any elector asking for or receiving any assistance or help in marking his ballot at that election on the 5th day of November, 1912?—A. I did not.

Q. What politics did Mr. Bacon have?—A. He was a Democrat.

Q. Is he living now?—A. He is not.

Q. Was he a man of good repute in that neighborhood?

Mr. ADAMS. I object to that as immaterial and incompetent, and not the proper way to show it, and hearsay.

A. As far as I know, he was.

Q. What was Mr. Sayer's politics?—A. He was a strong Democrat.

Q. You speak of him as being an inspector of the election?—A. He was not on the inside of the booth, back where we had the ballots on the table. When they would come in and call for ballots he simply handed them their ballots; that was his duty that day.

Q. There were two ballot boxes, you say, in which the ballots were placed for candidates in office?—A. Yes, sir; we had three boxes; one for the suffrage vote and the constitutional amendments.

Q. And two were used to put ballots in that were cast for candidates in office?—A. Yes, sir.

Q. Were those boxes regular ballot boxes coming from the township?—A. They were boxes we had always used.

Q. For that purpose?—A. Yes, sir; for years.

Q. How were they locked?—A. There was a clasp that fastened on the top of the lid and came down through a staple, and the lock went through.

Q. A padlock?—A. Yes, sir; and the clasp that came on the top of the box was put on with screws and screwed fast.

Q. A steel hasp that came down?—A. Or iron; yes, sir.

Q. And this padlock went through and locked the box in that way?—A. Yes, sir.

Q. You say that Mr. Sayer took the constitutional oath of office when he began?—A. Yes, sir.

Q. Do you know anything about what kind of an oath he signed the next day?—A. I couldn't say.

Q. Until you hear it read?—A. I couldn't say.

Recross-examination by Mr. ADAMS:

Q. Counsel here caused you to say that Mr. Sayer was an inspector. He was an instructor?—A. What we call an instructor; yes, sir.

Q. He was separate from the rest of the board when he was handing out those ballots?—A. He was on this side of the booth and the rest of the board on the other side.

Q. You had about four or five booths there that day?—A. Four.

Q. The length of the booths as they were put up against each other occupied what length of space?—A. I should say something like—

Q. (Interrupting.) All of them together?—A. Something like—I don't know how wide they were—probably 4 feet, probably 16 feet.

Q. Now, on one side of this row of booths was Mr. Sayer with his ballots?—A. Yes, sir.

Q. And on the other side of that 16 feet occupied by those booths were the members of the election board?—A. Yes, sir.

Q. So that when Mr. Sayer was handing out ballots, you men there who were on the election board couldn't see Mr. Sayer?—A. Not without going around there.

Q. You would have to go around the end of the booths to see him?—A. Yes, sir.

Q. When the ballots were marked by somebody, some of the inspectors, they handed about 25 of them to Mr. Sayer?—A. Yes, sir.

Q. And when the voters came in there he would give them ballots?—A. Yes, sir; he did that in his part when they came in and wanted a ballot; he would slip them off a ballot and hand it to them.

Q. You couldn't hear what Mr. Sayer said; he could talk with the people and you couldn't hear what he said?—A. We couldn't hear him talk; there were quite a good many talking at the time.

Q. He could see and talk to people as they came in, and you couldn't hear it?—A. No, sir.

Q. You could talk over among yourselves and Mr. Sayer couldn't hear it where he was on the other side of those booths?—A. Sure.

Q. That is the way the election was conducted that day, was it—Mr. Sayer on one side of those booths and you gentlemen on the other side of the booths?—A. Yes, sir.

Q. You did it in that way all day up to the time the polls closed—Mr. Sayer on one side and you inspectors on the other side?—A. Yes, sir.

Q. Those booths are about 5 or 6 feet high?—A. You could just see the top of a man's head; I think probably 5 or 6 feet, between 5 and 6.

Q. You heard no voters ask for instructions that day?—A. I don't think they did.

Q. You inspectors didn't see the voters at all, then; didn't have anything to do with giving them any ballots, did you?—A. No, sir.

Q. You would first see the voters when they came out of the booths with their ballots ready to hand them in to be deposited in the ballot box?—A. We could see them in there; the doors didn't come down within a foot; but aside from that we could not see them until they came through.

Q. That would be after they had marked their ballots?—A. That would be after they had marked their ballots.

Q. Who else acted as clerk there that day besides Mr. Mapes and Mr. Knapp, if anybody, at any time?—A. Well, Mr. Witherall was there a few minutes through the day, but not while we were counting the vote.

Q. What did he do there?—A. He tallied for Mr. Sayer and acted a little while in Mr. Knapp's place, Witherall, a little while.

Q. How long did Mr. Witherall help?—A. Just a few minutes, probably 15 or 20 minutes.

Q. He was not sworn in?—A. No, sir.

Q. He didn't take any oath there?—A. Not that I know of.

Q. You would know if you were there all the while he was there?—A. I calculated to be there all the time.

Q. Mr. Sayer didn't take any oath?—A. I think not.

Q. He helped count?—A. A few minutes he helped tally.

Q. That is, he kept some of those election books, put down some tallies?—A. He would read them off; I was tallying them on the election book.

Q. You didn't take any oath to do that correctly?—A. Not that I know of.

Q. Nor did Mr. Witherall?—A. No, sir; not that I know of.

Q. Did any other one or ones assist there in tallying and counting the votes at any time?—A. I think not.

Q. Mr. Campbell you say did not in any way assist?—A. No, sir.

Q. What did he do there?—A. He sat there in a chair and slept; I guess he didn't have any place to go.

Q. Mr. Campbell, is he here to-day?—A. I think not.

Q. Was he there when you quit about 1 o'clock the morning of the 6th?—A. I couldn't say whether he was or not; I think not; I think he came back just after we went back; I think he came over after we went back.

Q. He was there when you left in the morning?—A. Yes, sir.

Q. Sitting in a chair?—A. He was there until we left, then he went out when we went.

Q. Are you sure about that?—A. I know he did; yes, sir.

Q. What makes you positive about that, that he went away when you went away?—A. He went out with the rest of us.

Q. Did you see him go out with you?—A. Yes, sir.

Q. Didn't you leave him there in the chair when you went out?—A. No, sir.

Q. Are you sure about that?—A. I know we didn't.

Q. Was he a drinking man?—A. Why, he gets a little in him once in awhile; yes, sir.

Q. Did you find him in there when you went back from the barber shop?—A. No, sir.

Q. Was the door unlocked when you got back from the barber shop to the room in which the election had been held?—A. Mr. Knapp just came up to the door as we came across from Mr. Bacon's and was unlocking the door when I came up where he was.

Q. Were you and Mr. Knapp the first two men in there?—A. Mr. Mapes was along.

Q. Were you and Mr. Knapp and Mr. Mapes the first ones in there after you had gone to the barber shop on the morning of the 6th when you got over to the election?—A. The four of us went in almost together, Mr. Bacon, Mr. Knapp, Mr. Mapes, and myself.

Q. Was Mr. Campbell in there when you got in?—A. No, sir.

Q. Sure?—A. I am sure he was not in there.

Q. Did you see him go in?—A. He came and hung on the railing awhile and sat down on a chair and I guess he went asleep.

Q. Did you see him in the room that morning after you came back from the barber shop?—A. I didn't see him come in the door.

Q. The first thing you saw of him he was leaning over the railing there?—A. He stood there watching us; yes, sir.

Q. Now, Mr. Witherall took Knapp's place, did he?—A. I think so.

Q. And Mr. Bera took Mapes's place?—Y. Yes, sir; but not at the same time.

Q. There was no one man occupied in tallying there through from beginning to the end, was there, all the time while the count was going on?—A. Why, no; they changed off for a short time.

Redirect examination by Mr. MAYNARD:

Q. Judge Adams asked you if Mr. Sayer stood there and passed ballots out to the voters as they came in whether he would have any opportunity to have spoken to the voters without you knowing it. Did you ever hear Mr. Sayer say a word in favor of the election of John M. C. Smith for Congress?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and hearsay.

A. He may have handed those ballots out——

Q. (Interrupting.) I didn't ask you that. Did you ever hear him say a word in favor of John M. C. Smith?—A. No, sir; I never did.

Q. Did you ever hear him——

Mr. ADAMS. I had no chance to object to that question before the witness answered it.

Mr. FELLOWS. I want this objection upon the record, that this cross-examination has been prolix, the examination has been prolix all the way through and it is apparent that the purpose of doing that is to becloud the testimony submitted to Congress and not with the view of definitely and distinctly arriving at the questions in issue in this case.

Mr. ADAMS. I take an exception to the remarks of counsel as being unfounded and unjust and not becoming to the attorney general of the State of Michigan. I object to the question as put to the witness last and by him answered before an opportunity was given to me to object on the ground that it is irrelevant, immaterial, incompetent, and hearsay, and for those reasons I ask that the answer be stricken out. I also take exception to counsel interrupting the witness when he has partly answered the question, evidently for the purpose of getting him to answer it in another way.

Q. Did you ever hear him advocate the election of Claude S. Carney for a Member of Congress at that election?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and hearsay.

A. I never did; no, sir.

Q. Did you ever hear him claim that he was supporting Claude S. Carney for Member of Congress?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and hearsay.

A. No, sir.

Q. In so far as you know, you never knew of his having advocated the election of either one of those men to the office of Congress?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and hearsay.

A. No, sir.

Q. Had you ever known of Mr. Sayer acting before as one of the inspectors of election there?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

(Last question read.)

A. Well, I think he has.

Q. Who initialed the ballots?—A. Frank H. Bacon.

Q. When he initialed the ballots to whom were they delivered?—A. To Mr. Sayer.

Q. Was Mr. Sayer seated within the railing?—A. He was within the railing only on the other side of the booths from us.

Q. He was within the railing as the voters entered the booths, was he not?—A. Yes, sir.

Q. These ballots were delivered to Mr. Sayer by Mr. Bacon, who initialed?

Mr. ADAMS. I object to that as leading.

A. Yes, sir.

Q. Did Mr. Sayer have a table there that the ballots were put on?—A. Yes, sir; he did.

Q. Was Mr. Sayer seated by the table?—A. He had a chair there a part of the time and part of the time he was standing, I presume.

Q. When voters came in and asked for a ballot did he deliver a ballot to them?—A. I suppose so.

Q. That is what he was placed there for?—A. Yes, sir.

Q. How long had he acted in that capacity; how many years in that precinct?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. I am not sure; I think he acted there before, but I am not sure; I couldn't say positively about that, at every election; I think he was an inspector before, but I will not say.

Q. Those were the duties he was discharging, were they?—A. Yes, sir.

Q. Did he take the oath of office before he took that place?—A. Yes, sir.

Q. He was sworn in?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. You don't know as a matter of fact whether Mr. Sayer was sitting down or standing up over on the other side all the time?—A. I do not.

Q. I notice that you stated in answer to counsel's question you presumed; you couldn't know because you couldn't see.—A. I couldn't see.

Q. You say he had a table on the side of the booth he was?—A. There was a table there constantly; yes, sir.

Q. But you don't know whether he used that table or not, do you? You couldn't see?—A. I couldn't see; he didn't want to stand and hold those ballots—

Q. (Interrupting.) I am not asking you that; we will take care of that later. You don't know of your own knowledge whether Mr. Sayer used that table—that one that was on that side of the booths that he was on—or whether he didn't use it, do you, of your own knowledge?—A. I saw ballots on that table.

Q. Did you see Mr. Sayer use that table on that side of the booths he was on while you were there on that election day?—A. I saw the ballots on the table.

Q. Did you see Mr. Sayer using that table for any purpose that day?—A. The table had ballots on.

Q. You saw some ballots on the table; that is all you can say?—A. Yes, sir.

Q. You were busy, were you not, on the other side?—A. I was busy at times; yes, sir; quite busy.

Q. Mr. Palmer was out so much time that you had to be busy?—A. I was busy most all day.

Q. You were attending to your business?—A. Yes, sir.

Q. You were not watching Mr. Sayer all the time?—A. I didn't have time much of the time.

Q. Mr. Sayer was over there when Mr. Palmer was out and one of you fellows was depositing the ballots and the other one was marking the ballots?—

A. Yes, sir.

Q. It kept you busy a good share of the time?—A. Yes, sir; I was busy at times; at other times I would not have so much to do.

Q. When you were busy about that Mr. Sayer would be busy?—A. Yes, sir.

Q. The more people there would be in there the more busy you would be?—A. Yes, sir.

Q. So you could not see much and did not see much that day of what Mr. Sayer was doing, did you?—A. No, sir; I did not.

Q. I don't want to get you in a wrong position here.—A. All right.

Z. D. SLATER, being first sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD.

Q. Mr. Slater, where do you reside?—A. At Sunfield.

Q. What is your age?—A. I am 70 years old.

Q. How long have you resided in Sunfield?—A. About 8 years.

Q. Did you hold any official position in connection with the general election that was held in the township of Sunfield on the 5th day of November last?—A. I was gatekeeper.

Q. Which gate did you have charge of?—A. The outer gate, where they came out.

Q. Where they came out?—A. Yes, sir.

Q. Who kept the other gate?—A. I think Mr. Gilbert; I think so; I am not very positive about that.

Q. Charlie Gilbert?—A. Charlie Gilbert.

Q. Did you ever act in the capacity of gatekeeper at any other election?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. More than once?—A. Yes, sir; I have acted more than once.

Q. Were you there when the polls opened on the 5th day of November last?—A. Yes, sir.

Q. Were you there when they adjourned for dinner?—A. Yes, sir.

Q. What did you see them do when they got ready to go to dinner?—A. We closed the polls for one hour for dinner. I being right across the road, they wanted to know if I wouldn't stay and take care of things while they went to dinner, and they would come back as soon as they could; so I did.

Q. Did you do that?—A. Yes, sir; I did that.

Q. Did you have charge of the polling place while they were at dinner?—A. I did for a time.

Q. Who took your place?—A. Mr. Knapp.

Q. After they left, did you remain in the polling place until Mr. Knapp came?—A. I did.

Q. State whether or not anyone went into that polling place during the time the board were to dinner while you were there.—A. No, sir; no one entered at all.

Q. Do you know whether or not anyone touched the ballot box or books or anything in connection with the election while you were in charge, while they were out?—A. I know they did not, because there was no one in.

Q. Did you meddle with them yourself or touch them or handle the books at all while they were out?—A. No, sir; everything was just as it was when they got back.

Q. How long did you remain there that day?—A. I think probably after Mr. Knapp came back in half an hour; probably I stayed there half an hour.

Q. Did you go to dinner then?—A. Yes, sir.

Q. Did you get back before the polls opened?—A. Yes, sir.

Q. Were you there when the polls opened, at 1 o'clock?—A. Yes, sir.

Q. How long did you remain in charge of that gate?—A. Until the polls closed, and a while after that.

Q. At 5 o'clock?—A. Yes, sir; about that time.

Q. You were not there when they stopped counting at night?—A. No, sir; I didn't stay as late as that.

Cross-examination by Mr. ADAMS:

Q. You are a little hard of hearing?—A. A little bit; yes, sir.

Q. You were a little bit hard of hearing along about the 5th of November?—

A. I have been for some time.

Q. You were at that time?—A. Yes, sir.

Q. And had been for some time before that?—A. Yes, sir.

Q. They didn't lock the door when they went out at noon to get their lunch, did they?—A. No, sir.

Q. This room in which the election was held was quite a large room?—A. Well, reasonably large; yes, sir.

Q. How long is that room, or was it, rather, on the 5th of November, where they took the votes, the whole room?—A. It was a room something as large as this.

Q. Was it a storeroom?—A. No, sir; it was partitioned off. There was a place in the front end where they voted; it was not more than from here to that door.

Q. How big was the whole room?—A. It was quite a large room.

Q. How big, how long, and how wide? Give your best judgment how long and how wide?—A. I couldn't tell you.

Q. Whether 50, 80, or 100 feet?—A. No, sir; not as long as that; maybe 35 feet.

Q. How wide?—A. I think it is not as wide as long; about 25 or 35; somewhere along there.

Q. A couple of doors opened into that room?—A. Yes, sir.

Q. A front one and a back one?—A. The back one was closed, the front ones were open. At the east there is a little door where they go through to vote.

Q. Did they have any fire apparatus in this room where the election was held?—A. No, sir; it was on the other side; that was on the other side where they voted, from there.

Q. Was the fire apparatus on election day in a separate room from where the election was held?—A. Yes, sir.

Q. In a separate room or the same room?—A. In a separate room; it was railed off, that is all.

Q. Did you go out of the room after the men went out—the inspectors of that election went out for their lunch—up to the time Mr. Knapp came back at noon?—A. No, sir; I did not.

Q. You were in there every minute?—A. Yes, sir.

Q. Sitting down?—A. I was sitting down sometimes and sometimes stood up looking to see whether Mr. Knapp was coming; I was getting kind of hungry.

Q. How was your sight?—A. I managed to read that night with my glasses; I couldn't see very awful good with them off.

Q. Your eyesight was not very good on the 5th of November, 1912?—A. No, sir; it was not—not what I would call first class.

Q. You were gatekeeper where the voters went out?—A. Yes, sir.

Q. After they had voted?—A. Yes, sir.

Q. What time did you leave there that day after the voting was stopped about 5 o'clock that day; how soon after that?—A. Well, now, I couldn't say exactly, but I presume somewhere about 9 o'clock.

Q. Didn't you go to supper that night?—A. I don't think I did, and I don't know but I did, too.

Q. You did, didn't you?—A. I went to supper; yes, sir. I stayed there a while, and they thought there was no good in me staying there any longer, and they said I might as well go home if I wanted to, and I went.

Q. How long were you gone to supper that day?—A. It didn't take me very long.

Q. You were kind of hungry?—A. Not as hungry as I was at noon.

Q. Were you gone an hour?—A. No, sir.

Q. Five minutes?—A. Oh, I was gone probably 10 minutes.

Q. How far did you have to go to supper?—A. A little farther than from here up street, almost across the street.

Q. Did you go home to your supper?—A. Yes, sir.

Q. You live right across the street?—A. Yes, sir; a little bit north.

Q. You think you were gone home to your supper about 10 minutes?—A. Yes, sir.

Q. From the time you left the voting place to eat your supper and came back there, you were gone about 10 minutes?—A. Something like that.

Q. You didn't bring your supper?—A. No, sir; I was not gone a great while anyway.

Q. Did the board go out to supper that night—the election board—any of them?—A. I think they did, we kind of paired off; they felt hungry I presume, too.

Q. They closed the voting place there when they went out to supper?—A. No, sir.

Q. You say they did not?—A. I don't think it.

Q. You are not sure about that?—A. I know they didn't; they went right to work counting the vote.

Q. They didn't quit counting and go out and get some supper and come back and begin counting again?—A. I don't mean they all went out at once; they went out one at a time, I think, and got something to eat, and some of them, I think, had it brought to them.

Q. You went away about 9 o'clock and didn't come back that night any more?—A. No, sir.

Q. You didn't go back the next morning?—A. No, sir.

Q. When did you next come back to that same room after you left there about 9 o'clock on the 5th?—A. I had no business, so I didn't go there.

D. W. KNAPP, being first sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Knapp, where do you reside?—A. Sunfield.

Q. What is your age?—A. I am 56.

Q. Your occupation?—A. Well, I work in a barber shop.

Q. Were you present at the election held in the township of Sunfield on November 5th, 1912?—A. Yes, sir.

Q. Did you occupy any official position at that election?—A. I was clerk of the election.

Q. When were you appointed, the morning of the election?—A. Yes, sir.

Q. Did you take the oath of office of clerk of the election in the morning?—A. Yes, sir.

Q. Were you there when the polls opened?—A. Yes, sir.

Q. How long did you remain?—A. I remained there until time to adjourn for dinner.

Q. What steps did you take to adjourn for dinner?—A. We made the regular announcement for hour, half hour, and quarter of an hour.

Q. When did they do that?—A. As soon as we adjourned and went to dinner.

Q. What did they do with the books?—A. They were on the table.

Q. And the ballots?—A. They were locked up.

Q. Where?—A. They were on the table; the box set on the table.

Q. You mean the ballot box?—A. Yes, sir.

Q. When did you lock the box up, in the morning?—A. When they commenced voting and it was not meddled with again until opened.

Q. Did you lock it up when you adjourned for dinner?—A. It remained locked.

Q. You left everything on the table, just as it was?—A. Yes, sir.

Q. Who did you leave it in charge of?—A. Mr. Slater.

Q. The last witness, Z. D. Slater?—A. Yes, sir.

Q. Did you go to dinner?—A. Yes, sir.

Q. Where?—A. At home.

Q. When did you return?—A. In about twenty minutes.

Q. Who did you find in charge of the place?—A. Mr. Slater.

Q. Did you take his place?—A. Yes, sir.

Q. Did you remain in charge of the polling place then until the board returned?—A. Yes, sir.

Mr. ADAMS. I object to that as exceedingly leading and counsel seems to be doing that right along.

Q. Was there anybody else in charge of that while the board was gone but yourself?—A. No, sir.

Q. After you went there did anybody approach the polling place but yourself?—A. I was not inside of it; no one was inside of it.

Q. Do you know whether anybody was inside of it?—A. I know there was not.

Q. Did anybody meddle or tamper with the ballot boxes or touch them after you got there until the board came?—A. No, sir.

Q. When did they open the polls again?—A. At 1 o'clock.

Q. How long did they continue?—A. Until 5 o'clock.

Q. What, if any, proclamation was made respecting the closing of the polls?—

A. At 4 o'clock the first proclamation was made.

Q. Then when?—A. 4.30, then 4.45, and 5 o'clock.

Q. Did they open the polls again of that election after they closed them at 5 o'clock?—A. No, sir.

Q. What did they do at 5 o'clock?—A. They commenced counting the ballots.

Q. Who were present when they first opened the ballots to count the ballots at 5?—A. Mr. Hager, Mr. Bacon, Mr. Palmer, Mr. Mapes, and myself.

Q. Who was Mr. Mapes?—A. He was the township clerk.

Q. When they commenced to count the ballots what did they first count?—

A. They counted the ballots up to see if they corresponded with the poll list.

Q. Did they correspond?—A. Yes, sir.

Q. Did you compare your poll books to see whether they agreed?—A. Yes, sir.

Q. Then what did you do?—A. Then we went on and counted the ballots and Mr. Mapes and I stayed there until they had them done.

Q. What did they count first?—A. They counted them out in straights.

Q. The straights of each party?—A. Yes, sir.

Q. I show you Exhibits 3, 4, 13, and 24, and ask you if you recognize those books, know what they are; have you ever seen them before?—A. Yes, sir; I do.

Q. What are they—the books that were kept there at that election?—A. Yes, sir.

Q. After they had the straights counted up, what did they then do?—A. They commenced to read off the split tickets.

Q. Who did the reading?—A. They were read off by Mr. Hager and some by Mr. Bacon and some by Mr. Palmer.

Q. What did you do?—A. I just simply made a tally mark in the statement book; when they called off a man's name I made a mark.

Q. A straight tally?—A. Yes, sir.

Q. What did the other clerk do?—A. He did the same thing.

Q. Did you keep any checking with each other to see whether your tallies were straight as you went along?—A. Yes, sir; we did.

Q. In what way?—A. Well, as a name was read, it would be, if I had 2 votes, I would say "2" and the other clerk "2," and the next time that came I would say "3" and the other clerk would say "3."

Q. Did you keep the count audibly, so they could hear?—A. Yes, sir.

Q. As you went along?—A. Yes, sir.

Q. That was done all the way through?—A. Yes, sir.

Q. How long did you remain there assisting in this count?—A. I remained there until we closed at midnight.

Q. Did you go back after that?—A. Yes, sir.

Q. Who was there when you went back?—A. I was the first one at the door and unlocked it, and Mr. Hager and Mr. Bacon was right there.

Q. Did they go in with you?—A. Yes, sir.

Q. Did you find the polling place as you had left it, or had there been any alterations?—A. It was just as we left it.

Q. When you got back, what did you go to doing?—A. Mr. Bacon and Mr. Hager went to reading the split tickets and Mr. Mapes and I went to tallying them as read to us.

Q. How long did you stay there at that time?—A. I stayed there until 5.30 or 5 o'clock—somewhere about that—in the morning.

Q. Did you stay there until it was concluded?—A. Yes, sir.

Q. When you got the votes read and tallied, what was done?—A. The result was read off.

Q. Who read it?—A. I did myself.

Q. At whose command?—A. At the command of the board.

Q. Did you read the result as to every officer that was voted for?—A. Yes, sir.

Q. That had any votes counted for?—A. I read the result of the election right straight through.

Q. Now, witness, what have you to say as to the correctness with which you kept the tally?—A. Why, I kept the tally just as straight as I ever kept any tally.

Q. Did you keep it straight as they read it to you?—A. Yes, sir.

Q. When you left about midnight, or at that late hour in the night or on the morning of the 6th of November last, what disposition did you make of the ballots that had been cast and counted and those that were not counted?—A. They were put in a ballot box and locked up.

Q. How were those that had not been counted put in the ballot box?—A. They were rolled up by themselves, and those that were counted were laid out flat.

Q. Those that had not been counted were rolled up?—A. Yes, sir.

Q. And tied up?—A. Yes, sir.

Q. Do you know whether or not there was a correct count made of the ballots cast there at that election?—A. I considered it so.

Q. Do you know whether or not there was a correct tally kept or not?—A. I think it was.

Q. After the result of the election had been declared, what did the board do?—A. It adjourned for breakfast.

Q. Do you know who prepared those exhibits that have just been shown you or those election books used on that day?—A. I prepared part of them and part of them Mr. Mapes prepared.

Q. When did you commence to prepare those books and get them in shape to be signed?—A. Just as soon as we were sworn in.

Q. On the morning of the 5th?—A. Yes, sir.

Q. Did you continue that work from time to time throughout that day?—A. Yes, sir.

Q. When did you complete them?—A. On the morning of the 6th.

Q. After you knew the result of the election, did you complete these things there or take them with you and complete them at some other place?—A. We took them to Mr. Bacon's office.

Q. Was he a justice of the peace?—A. Yes, sir.

Q. What were his politics?—A. He was a Democrat.

Q. Is Mr. Bacon now living?—A. No, sir; he is dead.

Q. Who did you see at Bacon's office when you went there to finish up the books?—A. Mr. Hager, Mr. Palmer, Mr. Bacon, and myself.

Q. Did you set any figures down in the tally sheet that night before—after the count was completed, before you went to Mr. Bacon's office, so as to know the amount that each gentleman was credited with?—A. Yes, sir; they were all set down.

Q. The figures?—A. Yes, sir.

Q. Now, witness, take this Exhibit "4"; is that in your handwriting those figures and tallies?—A. Yes, sir; it is.

Q. This tally book, taking the office of Representative in Congress on page 12, of Exhibit "4," after the words "Representative in Congress," what four names do you see as candidates named for that office?—A. John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley.

Q. What tallies do you find opposite John M. C. Smith's name?—A. One hundred and seventy-four.

Q. That is the total?—A. Yes, sir; that is the total.

Q. What were the straights?—A. One hundred and twelve.

Q. What are the splits?—A. Sixty-two.

Q. The total is ascertained by adding those two together?—A. Yes, sir.

Q. Are there any tallies opposite his name there; any figures or tallies, straight marks?—A. Yes, sir.

Q. How many tallies are there there?—A. Sixty-two.

Q. There is where you obtain the figures 62?—A. Yes, sir.

Q. Were those set down there that morning before you left the polling place, before you went to Mr. Bacon's?—A. Yes, sir.

Q. Just as that book is now?—A. Yes, sir.

Q. What you did after you went to Mr Bacon's office was to sign up those certificates?—A. Yes, sir.

Q. In each place?—A. In each place.

Q. Did anybody at that place at any time while you were there tally this vote?—A. William Witherall took my place a few minutes.

Q. When was that?—A. In the evening.

Q. About what time?—A. I think between 9 and 10 o'clock.

Q. How long was he in your place?—A. Not over 10 minutes.

Q. Do you know how many tallies he tallied while you were gone?—A. I do not.

Q. Is that the only time you left the job?—A. That is the only time I was away from the place.

Q. Do you know of anyone else tallying there besides yourself and Mr. Witherall?—A. Yes, sir; Mr. Bera.

Q. What time in the day did he tally?—A. J. H. Bera? Just a little bit before we closed; perhaps half an hour.

Q. Early in the morning of the 6th?—A. Yes, sir.

Q. Just before you quit tallying?—A. Yes, sir.

Q. Who was keeping the tally while he was tallying? Who else?—A. I was there.

Q. He didn't get hold of your book, did he?—A. I don't think he did.

Q. Do you know whether that tally after he came there was correct or not, after Mr. Bera came in; do you know that tally was correct as it was read to you after Mr. Bera took the place?—A. I don't know whether—I didn't notice—I might say yes.

Q. He didn't take your book?—A. No, sir.

Q. Had you seen Mr. Bera about the polling place anytime before that day?—

A. No, sir; only when he came to vote.

Q. You know Mr. Sayer, I suppose?—A. Yes, sir; Albert Sayer.

Q. What are his politics?—A. Democrat.

Q. What were Mr. Witherall's politics?—A. Well, Mr. Witherall now, I suppose, is a Republican. He has always been a Democrat.

Q. You mean he was enrolled as a Republican at that time?—A. Yes, sir.

Q. Mr. Knapp, what have you to say as to whether you gave Mr. Carney credit for all the votes that were read off to you as belonging to him at that election?—

A. I gave him every vote that was called for Mr. Carney he got.

Q. Did John M. C. Smith get any votes that were not called for him?—A. No, sir.

Mr. ADAMS. I object and move to strike out the answer as incompetent. I don't see how this witness can tell whether he did, except as far as he kept the tally.

Q. I will ask you whether you gave John M. C. Smith credit for any votes that were not read off as belonging to him at that election?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. So the adjournment that you took you said it was about midnight, about 1 o'clock you took that adjournment?—A. Somewhere about that.

Q. On the 6th of November?—A. Somewhere there.

Q. What hour did you adjourn to?—A. We didn't adjourn to any hour.

Q. You did not adjourn that election at 1 o'clock on the morning of the 6th to any hour without any designation of the hour, did you?—A. We simply adjourned until morning, then we found out we had to go to work and we went back to work again in about 30 minutes.

Q. When you took that adjournment about 12 or 1 o'clock on the morning of November 6, 1912, to what hour did they adjourn that election to?—A. Well, sir, they adjourned until morning.

Q. No hour fixed?—A. No definite hour fixed that I remember.

Q. There was no announcement made that this board now adjourns until 6 o'clock in the morning or 7 o'clock in the morning or 8 o'clock in the morning or any other particular hour, was there?—A. I don't know whether there was or not.

Q. You don't know?—A. I don't know.

Q. You were right there?—A. Yes, sir.

Q. Do you mean to be understood upon this record that you can't tell to what hour, if to any hour, that board adjourned when it adjourned about 1 o'clock on the morning of November 6?—A. It might have adjourned to some hour.

Q. It might have done a lot of things, what did it do?—A. I don't know what hour we adjourned to.

Q. It didn't adjourn to any hour, but until morning?—A. That is the way I understood it.

Q. You heard the adjournment made?—A. Yes, sir.

Q. Who made it; was it said, "This board now adjourns until morning?"—A. I think not.

Q. What was said?—A. I couldn't tell you what was said.

Q. Give us your best recollection of what was said? What did Mr. Palmer say?—A. He was tired out—Mr. Palmer said he was tired out; he said he was tired out, Mr. Palmer did.

Q. What else did he say?—A. He thought we might as well adjourn until morning, that is the way I understood it.

Q. Was that all that was said about the adjournment?—A. I think so.

Q. On that announcement that Mr. Palmer made, that you have now testified to, the board adjourned?—A. I think they did.

Q. No other announcement was made?—A. Not that I know of.

Q. You were there until the board of inspectors left, were you?—A. Yes, sir.

Q. And went out with them?—A. Yes, sir.

Q. So if any other adjournment was made, you were in a position to hear it?—

A. I presume I would; yes, sir.

Q. Now you stated that Mr. Bera was there in the morning about half an hour?—A. Somewhere about that.

Q. What time in the morning did he come there?—A. I couldn't tell you exactly to a minute: it might have been a few minutes before or after 12 o'clock.

Q. And he remained there how long?—A. Until the votes were all counted but two, I think.

Q. How long was that after Mr. Bera got there?—A. I couldn't tell you, quite a few votes to count after Mr. Bera got in there, probably 10 or 12, somewhere along there.

Q. How many votes would you say Mr. Bera helped count?—A. I couldn't tell you.

Q. Whose book did he keep tally on, if anybody's book?—A. On Mr. Mapes.

Q. When Mr. Bera kept tally of Mr. Mapes's book, Mr. Mapes was not there?—A. No, sir.

Q. He had gone out of the place where you were holding the election?—A. Yes, sir.

Q. Mr. Bera at that time was a Republican?—A. Yes, sir.

Q. And was at that time postmaster at Sunfield?—A. Yes, sir.

Q. And had been postmaster there for 8 or 10 or 12 years?—A. Somewhere along there.

Q. Were you there when Mr. Bera was there?—A. Yes, sir.

Q. All the time?—A. Yes, sir.

Q. Mr. Witherall took your place?—A. Mr. Witherall took my place the fore part of the evening.

Q. What time in the evening was it he took your place?—A. Between 9 and 10 o'clock.

Q. You were gone about how long?—A. Not over 10 minutes.

Q. Now Mr. Witherall was a Republican November 5?—A. Yes, sir; he was registered as a Republican in the primary poll book.

Q. And was so registered immediately before that election on November 5?—A. Yes, sir.

Q. Mr. Witherall tallied some?—A. Yes, sir.

Q. Of your own knowledge, you don't know whether Mr. Witherall's tallies were correct or not?—A. I don't know anything about that.

Q. You couldn't know that?—A. No, sir.

Q. You said your figures were set down in the book before you left?—A. Yes, sir.

Q. In the tally book?—A. Yes, sir; they were set down, and I read them off, and Mr. Hager copied them just as I read them off.

Q. We are talking about these election returns, not what Mr. Hager or anybody else may have done.—A. No, sir.

Q. When you said the figures were put down, you mean in the tally book?—A. Yes, sir.

Q. That is all you referred to?—A. Yes, sir.

Q. The statement book was filled up the next morning?—A. Yes, sir.

Q. Over at Bacon's office?—A. Yes, sir.

Q. So that all you filled out that night was the tally book?—A. Yes, sir.

Q. When you got over to Bacon's office on the morning of the 6th Mr. Mapes was not there?—A. No, sir.

Q. Who brought the books over to Mr. Bacon's office?—A. I took them over myself.

Q. Where did you get them?—A. I took them from the polling place and delivered them to Mr. Bacon's office and locked the office up.

Q. When?—A. That morning after we quit at the polling place.

Q. When you left the voting place on the morning of November 6, 1912, you took all the election books, did you?—A. Yes, sir.

Q. All that had been used there on election day to Mr. Bacon's office?—A. Yes, sir; and locked the office up.

Q. And put them in Mr. Bacon's office?—A. Yes, sir.

Q. Did you lock the office?—A. Yes, sir.

Q. How did you happen to have the key?—A. Mr. Bacon gave me the key and told me to put them in there.

Q. You took them in there and locked the door?—A. Yes, sir.

Q. And left them on a table, there perhaps in the office?—A. Yes, sir.

Q. And took the key?—A. Yes, sir; with me, and went to breakfast.

Q. Then when you got back who was in the office?—A. Nobody until I unlocked it.

Q. You unlocked the door, did you, when you went back to Mr. Bacon's office again?—A. I went back down after breakfast, and Mr. Hager was there, and Mr. Hager and Mr. Bacon, and I went over and all went in together.

Q. The ballot boxes were not at Mr. Bacon's office at any time up to the time you made these returns?—A. No, sir.

Q. The ballot boxes were left where the election was held?—A. Yes, sir.

Q. They were not sealed when you left the voting place in the town hall on the morning of November 6, after you finished your tally?—A. Yes, sir; Mr. Hager put a seal on them.

Q. What kind of a seal did he put on them?—A. He had red sealing wax and melted it on there over the hole or slot in the top and a cloth put over and he took and run the sealing wax, melted it on there and put the township seal on it.

Q. On the ballot box?—A. Yes, sir; and you can find it now.

Q. He put the seal on it on the slot through which the ballots could be put?—A. Yes, sir.

Q. Is that the Mr. Hager which testified here to-day?—A. Yes, sir.

Q. You testified, did you, that when you and the inspectors left the town hall, after you finished counting on the morning of the 6th of November, that Mr. Hager, one of the inspectors, at that election, put a strip of cloth over the slot in the ballot box and put sealing wax on it, did you?—A. I think I did.

Q. Are you sure?—A. I know it was sealed up.

Q. You testified that Mr. Hager put some cloth or something, some fabric over the slot in the ballot box and put sealing wax on it before you left there, did you or did you not?—A. I think I did.

Q. Are you sure about that?—A. I am quite positive of it.

Q. You swear on your oath he did, do you?—A. I think he did.

Q. Do you mean to be understood as swearing positively here under oath that Mr. Hager did that very thing, that morning, do you?—A. Yes, sir.

Q. You saw him do it?—A. I saw him working at it.

Q. You saw Mr. Hager put some cloth over the slot in the ballot box there that you used on the 5th of November, and put sealing wax on that, do you?—A. I suppose he finished the job, I saw him doing it.

Q. That is as strong as you want to put it?—A. I think that is strong enough.

Q. That is as strong as you want to put it?—A. I know nobody meddled with the box.

Mr. ADAMS. I didn't ask you that, and I move that the answer be stricken out.

Mr. MAYNARD. We object to it being stricken out.

Q. You swear that you saw Mr. Hager, after you got through with the count at the town hall where you held that election, put some cloth on the ballot box over the slot into that ballot box and put sealing wax on there and sealed it up, do you?—A. I saw him to work at it and I suppose he finished his job.

Q. You saw him using sealing wax on the ballot box to secure the cloth over the slot?—A. I saw him working at it and I suppose he finished it.

Q. That is the same Hager who testified in your presence to-day?—A. Yes, sir.

Q. These ballot boxes in which the votes for Representative in Congress were deposited there on that day, were round boxes?—A. No, sir.

Q. What kind of boxes were they?—A. Square boxes, a little longer than wide.

Q. You didn't use any round boxes?—A. No, sir.

Q. Where did Mr. Hager get the fabric you say he used there in sealing that ballot box?—A. The fabric was on the box.

Q. Who had the key to the ballot box?—A. I had the key to it.

Q. You were clerk that day?—A. Yes, sir.

Q. You were not the township clerk?—A. No, sir.

Q. You and not the inspectors had the key to the ballot box that contained the votes for candidates for Representative in Congress, at that election?—A. Yes, sir.

Q. And nobody else had a key but you that you know of?—A. No, sir.

Q. You kept the key, did you, all the time during that election?—A. Yes, sir.

Q. Have you got it now?—A. No, sir.

Q. Who did you give it to?—A. To the supervisor.

Q. When did you give it to him first after you got through with that election?—A. After we got through with the election.

Q. When, after you got through with that election at Mr. Bacon's office, the morning of the 6th, did you first give that key to the ballot box, containing the votes for candidates for Congress, to him?—A. On the morning of the 6th, when we closed up.

Q. At Mr. Bacon's office?—A. Yes, sir.

Q. Where did you get the key of that ballot box?—A. Well, sir, it was handed to me that morning when I went in by Mr. Palmer.

Q. Was the ballot box locked when the key was handed to you?—A. Yes, sir.

Q. You went right on with your election then and left it locked, after the key was handed to you, and deposited the ballots in it?—A. After the board was organized, Mr. Palmer told me to get the ballot box and prepare it, and I unlocked the ballot box and took the ballots that stuck out of it and put them in the stove and burned them up and held the box up that the inspectors could see it was empty; then I locked it—locked the box up—and he told me to keep the key.

Q. Did you lock it?—A. Yes, sir.

Q. You say, Mr. Knapp, that when you got through, at 5 o'clock in the morning at the town hall, counting the vote, that you read off the names of the candidates and the votes for each one that your poll book showed each one got?—A. Yes, sir.

Q. That you put down?—A. Yes, sir.

Q. Or that were, rather, on your tally book?—A. That was on my tally book.

Q. You read those off aloud?—A. Yes, sir.

Q. You went out to supper?—A. No, sir; I did not.

Q. Where did you get your supper?—A. I ordered my supper in and stayed right there.

Q. You went out to dinner?—A. Yes, sir; I went out to dinner.

Q. Were you out at any other time except that time you were out when Mr. Witherall took your place, only when at dinner?—A. That is the only time.

Q. You took your adjournment about 1 o'clock in the morning of the 6th?—A. Somewhere thereabouts.

Q. And you came back there and opened up and went to counting about 2 o'clock?—A. No, sir; I don't think it was 2 o'clock; I don't think we were gone from the hall over 30 minutes.

Q. How do you fix that time?—A. I don't know anything about that.

Q. That is just an estimate?—A. Yes, sir; just long enough to walk to my place and eat a lunch and walk back two blocks.

Q. How did you get word to go back; who gave you any word?—A. Mr. Hager let me know.

Q. Did he come to your house?—A. He telephoned me.

Q. Were you through with your supper when you got the telephone?—A. I was just getting up from the table when the telephone rang, and he says, "We will have to go to work."

Q. Did you go right back or not?—A. I went right straight back.

Q. Were the others there when you got there?—A. The others were coming; I saw them and I waited until they got close and I unlocked the door and we all went in together.

Q. Did they all go in at the same time?—A. Practically so; we all went in together.

Q. Was Mr. Mapes there?—A. Yes, sir.

Q. Was Mr. Bacon right there?—A. Yes, sir.

Q. And Mr. Hager?—A. Yes, sir.

Q. All got right there coming from different parts practically at the same time?—A. Yes, sir.

JOEL H. BERA, being first sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Sunfield.

Q. How long have you lived there?—A. Twenty-five years, about.

Q. What is your age?—A. I hate to tell that—I am 60.

Q. Mr. Bera, what is your occupation?—A. I am in the furniture and undertaking business at Sunfield.

Q. What official position do you hold?—A. I am postmaster.

Q. How long have you been postmaster there?—A. About 13 years.

Q. Have you ever held any township offices?—A. Yes, sir.

Q. What?—A. Clerk, supervisor, and treasurer; almost all the offices they could give me.

Q. In the township?—A. Yes, sir.

Q. Did you hold any township office on the 5th of November last?—A. No, sir.

Q. Were you deputy township clerk?—A. Yes, sir.

Q. That would be a township office.—A. Would it?

Q. How long did you hold the office of deputy township clerk?—A. Just this year.

Q. This year, 1912?—A. Yes, sir.

Q. Who was the township clerk?—A. My son-in-law.

Q. What is his name?—A. Mapes.

Q. Mr. Bera, did you vote at the election held in the township of Sunfield November 5, 1912?—A. I did.

Q. About what time of day did you vote?—A. I think when I went to my dinner or came from my dinner.

Q. Were you about the polls at any time during that day?—A. I don't think I was; I don't remember that I was.

Q. Did you return the next morning before daylight?—A. I did.

Q. About what time?—A. About 5 o'clock, I think.

Q. How did you happen to go there at that hour?—A. I was there; I got up to take care of the body of a man who was killed with the evening train.

Q. And on the way from your visit did you stop at the polls?—A. Yes, sir.

Q. Did you take any part about the work at the polls that morning when you stopped?—A. Yes, sir.

Q. What did you do?—A. I tallied for the clerk.

Q. Why did you do that?—A. He appeared to be fatigued and I asked him to let me and let him rest a few minutes.

Q. Did he leave the polls?—A. I think he did.

Q. How many votes did you tally after you sat down?—A. I think about 10 or 12.

Q. Any more than that?—A. I wouldn't say so.

Q. Who was reading the ballots when you were tallying?—A. Mr. Hager.

Q. Did he read all the time as long as you were there?—A. I think he did; yes, sir.

Q. Was there anyone else tallying besides yourself?—A. Will Knapp.

Q. Had you ever worked at that business before; tallied at an election?—A. I have.

Q. After you sat down there and began to tally, did you keep a correct tally as it was read off to you?—A. I did.

Q. Were you there when they completed the count?—A. I was.

Q. What did you hear about it?—A. Immediately after they completed the count—

Q. Did you hear any declaration there?—A. I heard Mr. Knapp read the result before leaving.

Q. Did you compare the tally sheet you kept with the one he had?—A. We did as we tallied.

Q. Did you tally the same as he did; after you arrived, did your tallies agree?—A. They did.

Q. Did you stay there while they arranged the polling place?—A. I did not.

Q. Did you see them lock the ballot boxes?—A. No, sir; I left before that was done.

Q. Did you at any time about the polls that day do any electioneering for the election of John M. C. Smith as Member of Congress?

Mr. ADAMS. I object to it as incompetent, irrelevant, immaterial, and hearsay.

Mr. MAYNARD. You charge in your notice that he did.

Mr. ADAMS. That has nothing to do with the charge made in the petition.

Q. Did you at any time about those polls on that day do any electioneering for the election of John M. C. Smith as Member of Congress?—A. I did not.

Cross-examination by Mr. ADAMS:

Q. Did you do any electioneering for John M. C. Smith that day anywhere?—A. I did not.

Q. You didn't try to get anybody to vote for John M. C. Smith at that election on that election day?—A. I did not.

Q. You didn't talk with anybody on the 5th day of November, 1912, while the voting was going on there at Sunfield about voting for John M. C. Smith for Congress?—A. I did not.

Q. You are sure about that, are you?—A. I am postmaster there; I know better than to do that.

Q. You are sure about that?—A. Yes, sir; I am.

Q. You are interested in John M. C. Smith's election for Congress, were you not, on the day of the election, November 5, 1912?—A. I voted for Mr. Smith each time he was up for Congress.

Q. You were interested in John M. C. Smith's election at that election, November 5, 1912, were you not?—A. So far as I have answered you.

Q. I would like to have an answer to this question: You were interested in John M. C. Smith's election at that election, November 5, 1912, were you not?—A. I have answered the question; as far as my vote was concerned.

Q. Beyond that you were not?—A. I was not.

Q. Had you done anything in John M. C. Smith's behalf, in behalf of his candidacy as a candidate for the office of Representative in Congress during the campaign just prior to the November 5, 1912, election?—A. I don't know that I even winked at a man.

Q. Did you do anything in his behalf during that time?—A. I think nothing.

Q. You were in the voting place there November 5, 1912, when they got through with the count about 5 o'clock on the morning of November 6?—A. Yes, sir.

Q. Was Mr. Palmer there then?—A. He came in just before they were finishing.

Q. How many votes were counted after Mr. Palmer got back there?—A. I think 1.

Q. That was all there was to count?—A. I think it was.

Q. All the rest of them, as you understood it, were counted?—A. Yes, sir; as I remember it.

Q. You said you tallied 10 or 12 votes?—A. Yes, sir.

Q. That is your recollection of the votes you tallied at that election?—A. Yes, sir.

Q. You say you heard Mr. Knapp read the result?—A. Yes, sir.

Q. How long did it take him to read the result of that election?—A. Not very long.

Q. About how long?—A. I would not pretend to estimate how many minutes; not many.

Q. Ten?—A. Perhaps.

Q. You didn't know that the polls were open when you dropped in there on that morning of the 6th?—A. Well, not until I had got back there.

Q. You understood that it was closed about 1 o'clock in the morning?—A. No.

Q. Were you there when the polls closed at 1 o'clock in the morning of November 6—were you in the voting place?—A. I think I did; I think I did go back there about the time they were closing.

Q. Did you stay there until they had closed about 1 o'clock?—A. I think not; I think I passed by their home after this man was hurt; I had been over there and I think I stopped as I went home.

Q. Had they adjourned when you stopped as you went home?—A. I don't think so.

Q. Did they adjourn before you went home?—A. I don't think so, if I recollect right.

Q. You went to bed, I suppose, and was called up when this man was hurt?—A. Yes, sir.

Q. Before you went to bed did you learn that the polls had closed until morning?—A. I don't recollect now; I will not swear.

Q. Mr. Mapes is your son-in-law?—A. Yes, sir.

Q. How long was he away from there after you began tallying; did he come back up to the time you left?—A. I couldn't say.

Q. What is your recollection whether he did or not?—A. I will not say whether he did or did not.

Q. You don't remember of seeing him there when the votes were being counted?—A. I have no recollection either way.

Q. Up to the time you left, after you began tallying?—A. I have no recollection about that.

Q. You were not sworn in there as any officer; any oath administered to you?—A. No, sir; only as deputy clerk.

Q. That was the oath you had taken when?—A. Soon after his election.

Q. When was he elected?—A. At the spring election.

Q. You were not sworn in by anybody when you came into that voting place that morning before you began tallying?—A. No, sir.

Q. The only oath you took was that of deputy township clerk?—A. Yes, sir.

Q. You didn't take any oath as clerk of that election, did you?—A. I did not.

Q. You are a Republican in politics?—A. Yes, sir.

Q. And always have been?—A. I agree with you.

Q. That is what kept you young?—A. Yes, sir.

Q. You have been quite a politician over there in Sunfield?—A. No, sir.

Q. You have been somewhat of a politician, haven't you?—A. I like to get out.

Q. It is no disgrace for a man to be one, perhaps it is an honor and a distinction. Were you a politician in Sunfield?—A. When I was on the ticket I always got out and hustled.

Q. I suppose you hustled for some other fellow on the ticket, didn't you?—A. I might not do them any harm.

Q. You tried to do them some good, didn't you?—A. Yes, sir.

Q. Did you?—A. I couldn't say.

Q. Did you work in their behalf?—A. I don't know as I have been very much of a laborer along that line.

Q. You have been clerk, supervisor, and treasurer of the township of Sunfield?—A. Yes, sir.

Q. I suppose when you were running for those offices you were quite intensely interested in politics, working for yourself and the other fellows on the ticket running at the same time you ran, were you not?—A. That is quite a while ago.

Q. You didn't work for yourself alone and not for the other fellows on the same ticket with you, did you?—A. I would rather, if there was to be anybody left, I would rather it would be somebody else than me.

Q. Did you work for the other fellows, too?

(No answer.)

Q. You were appointed deputy township clerk about what time?—A. Soon after the town meeting after the election.

Q. In the month of April, 1912?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Is your post office a fourth-class office?—A. Yes, sir.

Q. How large a town is Sunfield?—A. 500.

Q. Do you know what the politics of Mr. Witherall is, or was on the 5th day of November last?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. I had some talk with Mr. Witherall—

Mr. ADAMS. I object to any talk that he had with him.

WITNESS (continuing). Since—

Mr. ADAMS. I object to his testifying to any talk with Mr. Witherall as incompetent, irrelevant, and immaterial, and hearsay.

A. Mr. Witherall assured me that he voted the Democratic ticket and for Mr. Carney, with his own mouth.

Mr. ADAMS. I move that that go out as incompetent and hearsay.

Recross-examination by Mr. ADAMS:

Q. When did Mr. Witherall tell you that?—A. After the Sunfield count commenced.

Q. Since November 6, 1912?—A. Yes, sir.

Q. Where did he tell you that?—A. I think we were in my office.

Q. When—what day?—A. Well, now, I couldn't tell you that exactly.

Q. Can't you tell?—A. No, sir.

Q. You don't know?—A. No, sir.

Q. Who else was present?—A. I couldn't tell you.

Q. Was there anybody present?—A. I couldn't tell you.

Q. You don't remember whether anybody was present or not?—A. I think so, but I am not positive.

Q. Who was it?—A. I don't remember.

Q. Can you recollect who, if anybody, was present when this talk took place?—A. No, sir.

Q. Where did you say that took place—at your place of business?—A. I think it did.

Q. What place of business do you mean?—A. In my store.

Q. In Sunfield?—A. In Sunfield.

Q. What store do you mean?—A. In the furniture and undertaking business.

Q. What part of your furniture and undertaking business did this conversation with Mr. Witherall take place?—A. In the store.

Q. What part of the store?—A. I couldn't tell you; I think it was in the store.

Q. You don't know whether it took place in the store at all?—A. I haven't sworn it did.

Q. You don't know whether it took place in the store at all, do you?—A. I haven't sworn it did.

Q. Did it take place in the store?—A. I haven't sworn it did; neither will I swear it did not.

Q. Did it take place in the store?—A. I think I have answered it.

Q. Have you answered it all you want to or will?—A. Yes, sir.

Q. Might it have taken place outside of the store?—A. Yes, sir.

Q. Where, if outside of the store, did it take place?—A. I couldn't tell you.

Q. You don't know whether it took place in the store or outside, do you?—A. I do not.

Q. You don't know who was present, if anybody?—A. No, sir.

Q. How did the conversation come up?—A. The fact of Mr. Carney contesting the election with Mr. Smith or counting over in Sunfield brought it up.

Q. What was the conversation that took place?—A. I can't very well tell you.

Q. Can't you recall what took place—what the conversation was between you and Mr. Witherall?—A. I can't any further than this: I said to him that I thought Mr. Carney was out of place in contesting the election at Sunfield, because we had always attempted and tried to get the results as they actually were, and he said, "I agree with you," or words to that effect; then he said, "I voted for him; I never would again." Now, I hated to tell that here before Mr. Carney, but that is the conversation, as near as I can tell it.

Q. That is what Mr. Witherall said?—A. Yes, sir.

Q. You didn't like to have your election contested over there in Sunfield?—A. I never saw any really good ground for it.

Mr. ADAMS. I move to strike out the answer as not responsive.

Q. You didn't like to have—you were opposed to Mr. Carney contesting the election in Sunfield, were you?—A. I couldn't see any ground for it.

Q. You were opposed to it?

Mr. ADAMS. I move to strike out the last answer as not responsive and is incompetent, irrelevant, and immaterial.

A. That is my answer to the question.

Q. You were opposed to Mr. Carney contesting the election in Sunfield, were you, and are now?—A. I have answered it.

Q. That is the only way you will answer it?—A. Yes, sir.

DENNIS A. HAGER, recalled for further cross-examination by Mr. ADAMS, testified as follows:

Q. This certificate, Mr. Hager, in Exhibit 3, was made out there at Mr. Bacon's office on the morning of the 6th of November, 1912. That is the statement book?—A. I think so; yes, sir.

Q. It was all written up over there—whatever writing there is there?—A. Unless it would be this in here [indicating].

Q. This certificate here reads: "We do hereby certify that the foregoing is a correct statement of the votes given in the township of Sunfield, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912. In witness whereof we have hereunto set our hands, at the township of Sunfield, in said county and State, this 5th day of November, A. D. 1912." Now, was the word "township" and the word "Sunfield" and "Eaton" and the "5 of Nov." written in that certificate over there in Mr. Bacon's office on that day?—A. I couldn't say.

Q. Was it not?—A. I couldn't say whether it was or not.

Q. You signed that certificate, anyway, over at Mr. Bacon's office?—A. Yes, sir.

Q. You signed a certificate there that shows that that occurred and that you signed it on the 5th day of November, 1912, didn't you?

Mr. FRANKHAUSER. We object to it; it shows for itself.

Q. That was the fact about it, was it not; you did it on the 6th?—A. I think so.

Q. You are sure about that, you signed it on the 6th?—A. Yes, sir.

Q. Made the certificate on the 6th of November, 1912, at Mr. Bacon's office?—A. Yes, sir; it looks that way.

Q. Isn't that a fact, not only looks that way?—A. I think it is.

Q. You had taken advice, didn't you, before you made that certificate over at Mr. Bacon's office that the adjournment that you made of the election about 1 o'clock on the morning of the 6th was not legal?—A. We were advised to go back, told to go back and go to counting the votes.

Q. You were advised that the adjournment was not legal?—A. Nothing said about the adjournment.

Q. That is why you went back, was it not, you understood you had no right to adjourn?—A. Well, yes; after we found out we had no right we went back and went to work.

Q. When you signed that certificate in Exhibit 3, at page 16, which I last called your attention to, you signed that knowing that you should not have taken that adjournment about 1 o'clock on the morning of the 6th, didn't you?—A. I don't know as I just get your meaning.

Q. When you signed this certificate which I now show you, over at Mr. Bacon's office on the morning of the 6th of November, 1912, you knew that you should not have adjourned your work over in the town hall at 1 o'clock that morning?—A. The prosecuting attorney said we had to go back and go to work.

Q. You had that information from the prosecuting attorney before you signed that certificate on Exhibit 3?—A. Yes, sir; I think so.

Q. Mr. Hager, did you make an affidavit concerning the election held over there on November 5, 1912?—A. I made a statement.

Q. And signed it and swore to it?—A. I signed it.

Q. Did you swear to it?—A. Now, I rather think not.

Q. Have you a copy of it with you?—A. I haven't; I didn't get any copy.

Q. Who came to you with the statement and asked you to sign it, John C. Nichols?—A. He was there.

Q. He came to you as, a matter of fact, and saw you about it and asked you to sign it, did he?—A. Yes, sir; he came over there.

Q. Was there anybody with him?—A. Well, nobody came over with him that I know of.

Q. I mean when he came to see you?—A. No, sir; he was alone.

Q. Did he have the statement ready for you to sign?—A. Now, I couldn't say as to that.

Q. Did you sign it right there at that place?—A. I told him—he came to see what we had done, and I told him what we did, and he wrote it down and I signed the statement, no oath or anything.

Q. He didn't leave a copy of it with you?—A. No, sir.

Q. That is the John C. Nichols who was county clerk for a while?—A. Yes, sir.

Q. Do you know of anybody else who signed the same statement? Did you see anybody else sign any statement?—A. I didn't see anybody else sign it.

Q. Was there any other signature on the one you signed?—A. I couldn't say now.

Redirect examination by Mr. MAYNARD:

Q. In this certificate you signed, Exhibit 3, which reads as follows: "State of Michigan, county of Eaton, ss. We do hereby certify that the foregoing is a correct statement of the votes given in the township of Sunfield, Eaton County, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912." Did you believe that to be a correct statement when you signed it?—A. I did or I would not have signed it.

Q. Do you still think it to be true?—A. Yes, sir; I do.

Recross-examination by Mr. ADAMS:

Q. You still believe, do you, that the certificate here signed by you is a correct statement and that you set your hands to this certificate on the 5th day of November, 1912, and that you believe that to be a correct statement, eh?—A. I didn't say I set my hand there the 5th day of November. I believe that to be a correct statement, nevertheless.

Q. I call your attention to the certificate: "The foregoing is a correct statement of the votes given in the township of Sunfield, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912. In witness whereof we have hereunto set our hands at the township of Sunfield, said county and State, this 5th day of November, A. D. 1912."—A. I see that.

Q. That was not true, was it?—A. No, sir; I told you—

Q. (Interrupting.) You didn't set your hand there on the 5th?—A. No, sir; on the 6th; that was the correct vote of the 5th of November.

Q. You didn't set your hand to that certificate until the 6th day of November, 1912?—A. I didn't say I did.

Q. Then it is not a correct certificate, is it?—A. Well, as far as the certificate is concerned, the figures in that, I believe, are correct. It might have been—it would not be the correct time. I signed it the next day.

Q. It says you signed that at the township of Sunfield, in said county and State, on the 5th day of November, 1912; that part of that certificate is not true, is it?

Mr. MAYNARD. You have asked the same identical question 10 times, and I object to it.

Mr. FELLOWS. I object to any further interrogatories to this witness upon this subject. He has stated, as far as the figures are concerned, that it is a correct statement, and so far as the date is concerned, that it was not signed until the 6th, and for that reason that question has been answered.

Q. It says you signed that at the township of Sunfield, in said county and State, on the 5th day of November, 1912. That part of that certificate is not true, is it?—A. I don't know as I said I signed it on the 5th day.

Q. The certificate says it was signed the 5th?—A. Yes, sir.

Q. The certificate says you did sign that certificate on the 5th day of November. That part of that certificate which says you signed that certificate on the 5th day of November, 1912, is not true, is it?—A. I think the certificate probably is not true, but the figures of that election returns are true, to the best of my knowledge and belief.

Mr. ADAMS. That part of the answer as to the figures of the election returns being true, I move to strike out as not responsive. I am interrogating him wholly about the certificate.

Redirect examination by Mr. MAYNARD:

Q. When they presented this for your signature was your attention called to the date of the certificate at all as to whether the 6th or 5th?—A. No, sir; I read it over there. It was not.

Q. The statement here is that this is a correct statement of the votes given in the township of Sunfield, county of Eaton, State of Michigan, at the general election held on Tuesday, the 5th day of November, 1912; do you believe that statement to be true?—A. I do.

Q. Was your attention called to the date of it at all?—A. No, sir.

By Mr. ADAMS:

Q. You read the certificate over before you signed it?—A. I think so.

D. W. KNAPP, recalled for further cross-examination by Mr. Adams, testified as follows:

Q. Mr. Knapp, did you make any statement in writing of what occurred over there at the election in Sunfield on November 5, 1912, after the election was over?—A. Yes, sir; I think I did.

Q. Have you a copy of it with you?—A. No, sir.

Q. Have you a copy of it at home?—A. I don't know whether I have or not.

Q. You kept a copy, didn't you?—A. I got a copy; I made a copy of it myself.

Q. Didn't you keep it?—A. I don't know whether I can find it or not.

Q. What did you do with it?—A. I don't know. It is somewhere in the house. It was laid down, and I don't know whether I can find it or not.

Q. Who came to you to have you make a statement?—A. John C. Nichols came up there.

Q. That is John C. Nichols, of Charlotte?—A. Yes, sir.

Q. The same Nichols who was running on the ticket last November 5 election?—A. I guess so; I don't know.

Q. He is the same John C. Nichols who succeeded Mr. Pray in the county clerk's office?—A. Yes, sir.

Q. If you can find that statement, I wish you would bring it back with you to-morrow.—A. Well, I can't do it.

Mr. ADAMS. I would like to have the witness see if he can find it and come back here to-morrow.

Mr. FRANKHAUSER. Will it do if he sends it in a letter?

Mr. ADAMS. No. I would like to have him come back to-morrow, too.

Mr. FELLOWS. There has been no notice given us to produce this paper, and the witness has been here and we are not bound to keep him here two or three days for the accommodation of counsel. The witness is here, and if you have any further cross-examination to make, make it.

Mr. ADAMS. I will give you notice now to have the witness produce that paper here to-morrow morning at 11 o'clock.

WITNESS. I can't do it.

Mr. ADAMS. We give you notice now to produce the original that Mr. Nichols got from Mr. Knapp and also from Mr. Hager, and we give you that notice now; or any statement that he took of any witness or witnesses in Sunfield or Carmel Townships relative to that November 5, 1912, election. We give you notice now to have Mr. Nichols or anybody else who has this to produce them.

Mr. FELLOWS. We will not produce them. We will let you make oral proof of their contents.

Mr. MAYNARD. We have no such documents. I haven't, and I have not seen them nor heard of them.

WITNESS. I don't know whether I can find it or not. It may be in the house somewhere, but I don't know where it is. If I get home at 10 o'clock at night and back in the morning at 8 o'clock, I can't go through those things and get any paper and come back here to-morrow.

Q. Can you get back here to-morrow afternoon?—A. No, sir; there is but one train a day.

Q. Don't you get home until 10 o'clock at night?—A. No, sir; it is utterly impossible. I can't get here to-morrow.

Mr. ADAMS. You can get it here Saturday morning upon the arrival of the train?

WITNESS. At 11 o'clock.

Mr. ADAMS. Say Saturday morning of this week, unless we give the other side notice that we do not want you to come.

H. H. MAPES, being first sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. What is your age?—A. Thirty-five.

Q. Where do you reside?—A. Sunfield.

Q. How long have you lived there?—A. About 10 years.

Q. What official position in the township did you hold on the 5th day of November last?—A. I was township clerk.

Q. Are you still township clerk?—A. Yes, sir.

Q. When were you elected to that office?—A. Last April.

Q. Did you appoint a deputy township clerk in that township?—A. I did.

Q. Whom did you appoint?—A. J. H. Bera.

Q. What relation is he to you?—A. He is my father-in-law.

Q. Are you engaged with him in business there—the undertaking business?—A. Yes, sir; and furniture.

Q. Did you act as clerk of that election at the general election held in the township of Sunfield on November 5, 1912?—A. I did.

Q. Did you take any official oath in the morning when you organized the board?—A. Yes, sir.

Q. Who administered the oath to you?—A. Frank H. Bacon.

Q. Is he the oldest justice of the peace?—A. Yes, sir.

Q. He is not living now?—A. He is dead now.

Q. Were you there when they adjourned for dinner?—A. Yes, sir.

Q. What did you do with the books, papers, and ballot boxes?—A. The books were left there lying on the table and the ballot box was left—

Q. Which way is the front of the building?—A. West; it faces to the west.

Q. What street is that on?—A. Running which way?

Q. What is the name of the street that runs in front of this building?—A. I don't believe there is a name for it; I don't know what it is; I think Washington Street.

Q. Which way does that street run?—A. North and south.

Q. Which way does the railroad run through Sunfield?—A. East and west.

Q. And this building is on the north side of the street facing the west?—A. Yes, sir.

Q. Then, on which side of the building were the booths?—A. On the south side.

Q. As you go into the door from the west, the front door, what is there in the southwest corner of the building?—A. There is the council room in there, where the council meets.

Q. Is that where the village council holds its meetings, in that corner?—A. Yes, sir.

Q. Then, in the north of that building, is that the place where the polling booth is established?—A. It is in the corner here [indicating], in the southwest corner.

Q. Of that council room?—A. Yes, sir; then there is a railing running straight down through there near the center, and we used the south half of that.

Q. That railing ran north and south?—A. East and west the railing ran.

Q. Which way is the long way of the building?—A. East and west.

Q. And the council room is in the southwest corner?—A. Yes, sir.

Q. Then the polling place is divided by the booths?—A. Yes, sir; pretty nearly in the center.

Q. As you came in from the gate you face which end of the railing?—A. It would be in the northwest corner of the railing. You mean the door you come into the building?

Q. No, sir; the gate.—A. In the northwest corner.

Q. Which way does the railing run?—A. East and west.

Q. Which end of the railing was the gate at, the west end?—A. Yes, sir; the northwest part. This railing ran pretty nearly through the center.

Q. The gate where they came out was at the east end?—A. Yes, sir.

Q. Of the railing?—A. Yes, sir.

Q. Who was attending the east gate?—A. Mr. Slater.

Q. Who was attending the west gate?—A. Charles Gilbert.

Q. How old a man is Mr. Gilbert?—A. He is about 30 years old or 35.

Q. When they adjourned for dinner, who was left in charge of the polling place?—A. Mr. Slater.

Q. When you got back, who did you find in charge?—A. Mr. Knapp.

Q. They had changed during your absence?—A. Yes, sir.

Q. Did you remain there until the polls closed at 5 o'clock?—A. Yes, sir.

Q. What did you and Mr. Knapp enter upon the poll book?—A. What do you mean?

Q. The names of the voters?—A. Yes, sir.

Q. When you got through at night, did you compare your poll books to see whether they were alike in number?—A. Yes, sir.

Q. Were they?—A. Yes, sir.

Q. Did you see them count the ballots?—A. Yes, sir; the most of them.

Q. What work did you do there at the polls?—A. I acted as clerk.

Q. While they were counting what did you do?—A. I was tallying.

Q. Did anybody else tally but yourself?—A. Mr. Knapp.

Q. Explain just how you did that tallying?—A. Well, as the inspectors read the names off we would tally them down. The first one they would call off would be Governor, Mussulman 1, Ferris 1, and the second each one would call back so they would agree, and every time when we struck the fifth one we would call tally.

Q. Four straight marks and one cross?—A. Yes, sir.

Q. How long did you proceed in that way with the tally from the time you began at 5 o'clock?—A. Well, I was out somewhere between a half and three quarters of an hour about 8 or 9 o'clock; then I tallied until about 5 in the morning, when Mr. Witherall came over and relieved me.

Q. You were gone about that length of time?—A. Yes, sir.

Q. Do you think as long as three-quarters of an hour?—A. Well, now, I couldn't say for sure; it was not over three quarters of an hour.

Q. What were you doing?—A. I went home and fixed the fire over to the store a few minutes.

Q. Then you went back to the polling place?—A. Yes, sir.

Q. Something was said about somebody being injured there. About what time in the night did that occur, do you know?—A. Well, he was injured, I think, about 9 o'clock—I will not be sure—and died somewhere about 3 or 4 o'clock in the morning.

Q. After about 12 o'clock, between 12 and 1, did the board stop counting for a time?—A. Yes, sir.

Q. What did they do?—A. We took the ballots and straightened them out flat that were counted and put them in the box and rolled the others up so they would not get mixed up.

- Q. Those that were counted you straightened them out flat?—A. Yes, sir.
- Q. Where did you put them?—A. Back in the box.
- Q. What did you do with those that had not been counted?—A. We rolled them up in a roll.
- Q. In a close compact roll?—A. Yes, sir.
- Q. How were they fastened?—A. Tied with a string.
- Q. Was it a slimsy package or made strong?—A. It was a pretty strong package.
- Q. You put it in the box?—A. Yes, sir.
- Q. What did you do with the box?—A. We locked the box up.
- Q. Do you know who locked the box?—A. I think Mr. Knapp locked it.
- Q. The next morning after the count did you see the returns again?—A. Yes, sir.
- Q. Where?—A. At Mr. Bacon's office.
- Q. Were those statements and returns made out that morning entirely or did you do some of the work at it before?—A. They were filled in along during the day; that is, partly filled out.
- Q. What date was put in them at the time they were filled out?—A. I think November 5.
- Q. Why was that done?—A. Not thinking anything about we would not get through in time or have them all done that night.
- Q. So you say these were made out and put in the day before all ready to be signed?—A. Yes, sir.
- Q. With the exception of the numbers?
- Mr. ADAMS. I will take an exception to that way of examining the witness.
- Q. The next day, after the count was completed, did they meet at Bacon's office?—A. Yes, sir.
- Q. What was done there?—A. We finished making up the reports and sealed them up and I mailed them.
- Q. Did you mail them that day?—A. Yes, sir.
- Q. Do you know who they were directed to?—A. Yes, sir.
- Q. Who?—A. One to the county clerk and one to the judge of probate.
- Q. You mailed them yourself?—A. Yes, sir.
- Q. Did you see them sealed in good shape?—A. Yes, sir.
- Q. How were they when you posted them?—A. They were in good shape; they were registered.
- Q. You registered the packages?—A. Yes, sir.
- Q. How many packages were there?—A. Two.
- Q. While you were tallying, how near were you to the man that was reading off the ballots?—A. Well, right to the same table where I was tallying, the same as here is the table, it was a little wider than this and he sat on the opposite side from me; nearly opposite, he sat the same as here and I here [indicating].
- Q. Did you hear him read distinctly?—A. Yes, sir.
- Q. Who did you hear read?—A. Mr. Bacon read a good many of them and Mr. Hager and Mr. Palmer some of them.
- Q. Hager, Bacon, and Palmer?—A. Yes, sir.
- Q. Now, when they read them off, what did they first count?—A. The straight tickets.
- Q. Did you see them count them?—A. Yes, sir.
- Q. Did you take all the numbers?—A. Yes, sir.
- Q. Did you take them correctly as they gave them to you?—A. Yes, sir.
- Q. Then what did they do after the straight ballots were counted and tallied?—A. They went to counting the split tickets.
- Q. Was there any time when there was but one inspector reading those ballots?—A. No, sir.
- Q. When one was reading the ballots what was the other doing?—A. Generally looking over his shoulder.
- Q. Did you tally honestly and correctly just as they were read to you?—A. Yes, sir.
- Q. Did you give Mr. Carney credit for all the votes that were read to you at that time by the board?—A. I did.
- Q. Did you give Mr. Smith any tallies which were not read to you by the board as belonging to him?—A. No, sir.
- Q. Did you remain there after they began to count until they completed the count?—A. No, sir.
- Q. What time did you leave?—A. About 5 o'clock.
- Q. How many ballots did they have to finish up when you left?—A. Somewhere around a dozen ballots, I should think.

Q. Did you count them at all?—A. No, sir.

Q. Who took your place?—A. Mr. Bera.

Q. What did you do?—A. I went home.

Q. When did you next see the board?—A. I saw them about 8 o'clock.

Q. Where?—A. At Mr. Bacon's office.

Q. Who was present?—A. All of them were present, Mr. Bacon, Mr. Palmer, and Mr. Knapp.

Q. Was Mr. Hager there?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. You got up to Mr. Bacon's office on the morning of the 6th of November at 8 o'clock?—A. About that time; yes, sir.

Q. Not later than that?—A. I don't think so.

Q. Standard time?—A. I don't know what kind of time; about 8 o'clock.

Q. There is a difference of 20 minutes between standard time and fast time?—

A. I judge it would be standard time; that is what we generally go by.

Q. When you got to Mr. Bacon's office, Mr. Bacon was there and Mr. Knapp and Mr. Hager?—A. Yes, sir.

Q. And Mr. Palmer?—A. Yes, sir.

Q. You were the only fellow missing?—A. I was the last one there.

Q. The election books were there when you got there?—A. Yes, sir.

Q. All the election books were there that you had used over in the town hall the day before in conducting the election?—A. Yes, sir.

Q. All of them, every one of them, weren't they?—A. Yes, sir. Only I had the registration book?

Q. The registration book?—A. Yes, sir.

Q. That was not a part of the records that were kept there on the day of election, the registration book?—A. You asked me if I had all the books?

Q. Yes; and you were all right in answering it that way. The registration book you have referred to, that you took to that office, was the book in which was kept a record of those who were registered prior to that election?—A. Yes, sir.

Q. The registration book was there at the voting place on election day to see whether the voters that came in to vote had been registered prior to that day?—A. Yes, sir.

Q. That is the book you had?—A. Yes, sir.

Q. What was done with the other books, each and every one of them, that you used there on that election day?—A. Mr. Knapp, I think, got them; I went to bed at that time in the morning.

Q. So you don't know what they did with them?—A. Do you mean at 5 o'clock in the morning?

Q. Yes, sir; you were not there and don't know what was done with those books when they quit there?—A. No, sir; when they quit in the morning I was not there.

Q. When you got to Mr. Bacon's office about 8 o'clock on that morning of the 6th you found there all the books except this registration book you had used in carrying on that election there on the 5th day of November?—A. Yes, sir.

Q. The statement books and the poll book and the tally sheets, they were all there at Bacon's office?—A. Yes, sir.

Q. What did you go over there for?—A. I went over to get excused.

Q. That was all you went there for and that was all you did there that morning?—A. Yes, sir.

Q. Just got excused?—A. Yes, sir.

Q. Did you get excused?—A. Yes, sir.

Q. Did you stay there until the other fellows left or did you go right out as soon as you got excused?—A. I went right out.

Q. You got excused as soon as you got there?—A. Yes, sir.

Q. You were around there probably five minutes?—A. I was not there when the statements were made out; they were sealed up and delivered to me and I mailed them.

Q. Where were they delivered to you?—A. At the post office.

Q. You were working in the post office?—A. No, sir; they brought them down in front and called me and said the election returns were ready, and I took them and had them registered.

Q. We will go back a little; what I want to get at is this: When you went to Bacon's office that morning you just went in and stayed long enough to get excused?—A. Yes, sir.

Q. You were there less than five minutes probably?—A. I was not there that long probably.

Q. They didn't do anything there—the board—while you were doing that?—A. They were getting ready to work.

Q. You don't know of anything they did while you were there?—A. No, sir.

Q. You left and went to your place of business?—A. Yes, sir.

Q. Later on there were delivered to you some envelopes that were sealed up?—A. Yes, sir.

Q. Who brought those to you?—A. Mr. Knapp.

Q. Where were they delivered to you?—A. At the post office.

Q. That was a different place from where Mr. Bacon's office was?—A. Yes, sir.

Q. Mr. Knapp brought them down there in envelopes addressed to the board of county canvassers, care of the judge of probate or register of probate, Charlotte, Mich., one envelope?—A. Two.

Q. One was addressed that way?—A. I think so; yes, sir.

Q. And another envelope that was addressed to the county clerk, Charlotte, Eaton County, Mich.?—A. Yes, sir.

Q. When those envelopes were brought to you at your place of business by Mr. Knapp they were both sealed?—A. Yes, sir.

Q. You don't know what was inside of them?—A. I certainly do.

Q. You don't know what was inside of either of them?—A. Yes, sir; because I registered them and got a receipt back for them.

Q. Do you mean to tell this court and have it appear upon this record that when Mr. Knapp delivered to you those envelopes you knew of your own knowledge what was inside of them? You don't know of your own knowledge when Mr. Knapp delivered those envelopes to you what was inside of them, do you?—A. I do.

Q. How do you know?—A. I could tell by the envelope.

Q. How do you know what was on the inside of the envelope?—A. It came out all right.

Q. There might have been a piece of blank board in there so far as you know?—A. But there was not.

Q. Did you open them down here at Charlotte?—A. I did not.

Q. And yet you pretend to say that you know of your own knowledge what was in each one of those envelopes, do you? You didn't see what was put in them, did you, either of them?—A. I know I registered the two packages and got a receipt back for them.

Q. When anybody brings to you a package and they say there are diamonds in it, you know they are diamonds because somebody says there are diamonds in it?

Mr. MAYNARD. Objected to as immaterial.

Q. Is that the way you want to be understood?—A. Unless they are lying about it.

Q. Let me call your attention to Exhibit 2, which is an envelope addressed to the County Clerk, Charlotte, Eaton County, Mich. It is marked on it "Registered," which is a stamp put on there by a stamp, isn't it?—A. Yes, sir.

Q. And the figures 53 in that stamp, is that correct?—A. Yes, sir.

Q. Is that the register mark you put on that package?—A. I didn't register it.

Q. Who did register it?—A. I think the clerk in the post office did.

Q. Did you deliver that package to the post office in the town of Sunfield?—A. I gave it to the clerk.

Q. Have you the registration receipt?—A. I have it at home.

Q. That package you delivered to the post office at Sunfield, did you?—A. I was right there when he brought it in and handed it to the clerk and told him to register it.

Q. Who did?—A. I did.

Q. You handed it to the clerk in the post office and asked the clerk to register that particular package, but you didn't see what was put in the package, did you?—A. No, sir; I didn't see it, but I know what was in it. Don't you know what was in it?

Q. No; and you don't either. Remember you are under oath, witness. You testify that you know. I am asking you for your knowledge. That was sealed when you got it?—A. Yes, sir.

Q. It was sealed up at the time you delivered it to the post office clerk at Sunfield?—A. Just as I received it.

Q. It was sealed just as it was at the time you received it at the time you handed it to the post office clerk at Sunfield?—A. Yes, sir.

Q. It passed out of your possession then?—A. Yes, sir.

Q. And you did not get it back into your possession again?—A. No, sir.

Q. You didn't see it again until to-day, did you?—A. No, sir.

Q. That is equally true of this package "57;" that was sealed, that is the envelope when you handed it to the postal clerk?—A. Yes, sir.

Q. You didn't seal it?—A. No, sir.

Q. You didn't see it sealed?—A. No, sir.

Q. You didn't see what, if anything, was put inside of it before it was sealed, did you, at the time it was sealed? You didn't see whatever was in that package Exhibit 57?—A. I think I have answered the question——

Q. I say that you did not see what was put into Exhibit 57 at the time it was sealed up and before it was handed to you and you turned it over to the clerk of the post office?—A. No, sir.

Q. You don't undertake to say what was in it at the time you handed it to the postal clerk, do you, at Sunfield?—A. No, sir.

Q. You didn't see it opened at any time after that?—A. No, sir.

Q. So that you don't know of your own knowledge what was in that envelope, do you?—A. I do not, not of my own knowledge.

Q. You say of your own knowledge, you are under oath you know?—A. No, sir; I don't; I know what was in it all right.

Q. You are willing to go upon the witness stand and swear upon your oath now that you know what was in each one of those envelopes that are here before you, at the time you delivered them to the postal clerk in Sunfield on November 6, 1912?—A. I can prove those statements were in there and were mailed to the proper address.

Q. I didn't ask whether you could prove it. Are you willing to swear now that you know, you did know, when you handed those to the postal clerk November 6, 1912, at Sunfield, what was in each one of those envelopes?—A. I don't think I have to answer it, do I?

Q. Do you refuse to answer it?—A. I will answer it in this way: I know those were delivered to the proper address and you know they were, don't you?

Q. I am not on the witness stand. Do you swear now that you know what was in each one of those envelopes at the time you delivered them to that postal clerk at Sunfield on November 6, 1912? What do you say to that?—

A. I say the returns were proper and they were delivered to——

Q. You say you know, you saw nothing?—A. What it proved out to be.

Q. I didn't ask you that. Do you know of your own knowledge what was in those envelopes when you delivered them to the postal clerk November 6, 1912?

Mr. FELLOWS. I object to cumbering up the record. There is no claim but what the proper returns were put in the proper envelopes and mailed by the proper officials to the proper officials from the township of Sunfield.

Mr. ADAMS. Whether that is true or not, that has no bearing on the question, it is simply bearing on his testimony and the question is entirely proper.

Mr. MAYNARD. The witness has testified that he didn't know of his own knowledge; he has testified that he did not see them put in, but he keeps multiplying questions on that one thing after he has his answer.

Q. You left there on the morning of the 6th at the place where the voting was done that 5th of November, 1912, at what time?—A. About 5 o'clock.

Q. On the morning of the 6th?—A. Yes, sir.

Q. Your father-in-law took your place?—A. Yes, sir.

Q. And you didn't go back again that morning, did you?—A. No, sir.

Q. You said you thought Mr. Knapp locked the box; did you see him lock it?—A. I think I saw him lock it; yes, sir.

Q. Did you?—A. Yes, sir.

Q. You saw him lock it?—A. Yes, sir.

Q. When did he lock it?—A. What do you mean? Do you mean at midnight?

Q. I mean in the morning.—A. I didn't see him lock it in the morning; I thought you meant at another time.

Q. Did you see him lock it on the morning of the 6th?—A. No, sir; I was not there.

Q. Did he lock it at night, about 1 o'clock, when you adjourned?—A. Yes, sir; that is what I thought you meant.

Q. What time did you adjourn that night?—A. I don't think any regular adjournment—we talked about quitting. Mr. Bacon felt ill; in fact, he was sick

in bed a week after, and he says, "Boys, I don't think I can work much longer."

Q. I want to know what time you adjourned?—A. About 1 o'clock, I told you that two or three times.

Q. I don't think I asked you about that before.—A. Yes, you did.

Q. It was 1 o'clock, was it?—A. About that.

Q. There was no public announcement made, you just said you would adjourn until the next morning, is that right?—A. I didn't say anything.

Q. Is that what was said and done there?—A. We adjourned until morning.

Q. No hour was fixed at which you were to begin again?—A. I don't remember of any.

Q. Whose writing is this on Exhibit 3, there where the certificate blank stops?—A. That is not my writing.

Q. Do you know whose it is?—A. It looks like Mr. Knapp's writing.

Q. You saw that written in, did you? I don't mean the signatures, I am talking about what was written in in the printed spaces in the body of the certificate.—A. I should call that Mr. Knapp's writing.

Q. You saw that written in, did you?—A. I saw him writing, I couldn't swear just what he wrote, I saw him writing on the book.

Q. Where did you see him writing on the book?—A. Through the day.

Q. You don't know whether he wrote any of that part which is written with a pen in the certificate of Exhibit 3 before he got over to Mr. Bacon's office on the 6th, do you?—A. I think he wrote that in there.

Q. Where did he write it in?—A. On the table.

Q. Where?—A. At the town hall.

Q. On that particular book?—A. I think that is the book he was writing, or some book.

Q. Can you swear he wrote that in that certificate?—A. No, sir; I couldn't swear to that.

Q. That is what I thought.—A. It looks like his handwriting.

Q. When he wrote it in, you can not swear?—A. No, sir; I can not the exact hour.

Q. Nor the time nor place?—A. No, sir.

Q. Do you want to be understood as swearing now that you saw Mr. Knapp writing in that certificate on this Exhibit 3, on page 16 of it, do you, the part that is filled in there, the spaces there with a pen in the certificate?—A. I think I have answered that question.

Q. Do you swear that you saw him write that in there on the 5th?—A. I don't swear I saw him write that identical place; no.

Q. If you didn't see him write that identical place you can't testify he wrote that in on the 5th, can you, in the town hall?

Mr. FRANKHAUSER. He has testified to that once.

Q. You don't know whether he wrote that in, as a matter of fact, whether he wrote it in at the town hall or at Mr. Bacon's office, do you, in that particular certificate?—A. No, sir; I couldn't tell particularly that one item there, but he was writing on the book.

Q. When you went away at the noon adjournment all the books used there on the election were left on the table?—A. I think they were; yes, sir.

Q. They were not put in the ballot box and locked up, were they?—A. I don't think so.

Q. You saw them on the table when you went out, didn't you?—A. Yes, sir; I was not an inspector of election.

Q. Whether you were an inspector of election or a clerk of the election, did you see as clerk of the election whether they were lying on the table?—A. They were on the table when I went out.

Q. Did the other fellows go out with you?—A. I didn't notice whether they did or not; I couldn't tell you that.

Q. An adjournment was made when you left for the noon hour, was it?—A. Yes, sir.

Q. Did any of the inspectors of the election go away from there right after that noon hour when you left and went away?—A. I couldn't tell you; they didn't go with me.

Q. Did you see them go out of there?—A. No, sir.

Q. Did they go out ahead of you?—A. I didn't see them.

Q. Do you know whether they went out ahead of you?—A. I didn't see them.

Q. Were you the first to leave?—A. I don't remember; I don't know whether I was the first or the last man out; I didn't go out with any particular party.

Q. Was the time you left there when your father-in-law took your place on the morning of the 6th the first time that you were away after you began counting the ballots?—A. No, sir.

Q. When were you away any other time?—A. Between 8 and 9 o'clock; I don't know exactly what time.

Q. At night?—A. Yes, sir.

Q. How long were you away then?—A. A half or three-quarters of an hour.

Q. Who took your place then?—A. Mr. Sayer and Mr. Witherall; one tallied a little while then the other.

Q. When you left at that time Mr. Sayer and Mr. Witherall were doing the counting?—A. No, sir; Mr. Witherall tallied first, I think, for me and then Mr. Sayer tallied some; then I came back.

Q. When you left there about 8 o'clock on the evening of the 5th of November, who took your place to tally?—A. Mr. Witherall.

Q. Who else was tallying at that time?—A. Mr. Knapp.

Q. When you got back it was about in three-quarters of an hour?—A. About that.

Q. When you got back who was doing the tallying?—A. Mr. Sayer and Mr. Knapp.

Q. Had Mr. Witherall stopped tallying then?—A. I think he had.

Q. Who else continued tallying then?—A. Mr. Knapp and myself.

Q. Did Mr. Knapp go away at any time after you began tallying up to the time you left about 5 o'clock the next morning?—A. I think he was gone about ten minutes.

Q. Was that the only time he was gone after you commenced counting the ballots up to the time you left on the morning of the 6th?—A. That is the only time he was away while I was there.

Q. Were the names put on or any figures filled in the statement books before you left the town hall on the morning of the 6th?—A. What is the question?

Q. Was there any writing made in the statement books before you left the town hall on the morning of the 6th of November?—A. I think some of the blanks were made out.

Q. What blanks?—A. I don't just remember what blanks.

Q. How do you come to say that some of the blanks were filled out if you don't know what ones?—A. I couldn't tell; I haven't memory enough for that.

Q. You didn't have anything to do with filling out those statement books?—A. Some of them were filled out in the poll book.

Q. I am talking about the statement book. Is any of that writing in that statement book your handwriting—this Exhibit 3—any of your handwriting in that book?—A. No, sir.

Q. Is any of the writing in that book, Exhibit 13, the poll book, in your handwriting?—A. No, sir.

Q. Did you make any statement of what occurred there at that election on November 5 and 6, 1912, to anybody?—A. I don't know what you mean.

Q. After election didn't John C. Nichols come to see you?—A. Yes, sir; we had a little talk about it.

Q. Did you make any statement in writing to him of what you claimed occurred at that election on the 5th and 6th of November, 1912?—A. Yes, sir.

Q. Have you a copy of that statement with you?—A. I have not.

Q. Did you get a copy of the statement you made to him?—A. No, sir.

Q. Did you sign the statement you made to him?—A. I think I did.

Q. That is the same John C. Nichols who later on was deputy county clerk here after Mr. Pray got out of office—is that the same fellow?—A. Yes, sir; John C. Nichols, the attorney.

Q. He became county clerk after Mr. Pray quit?—A. I couldn't tell you that.

Q. He ran for circuit court commissioner on the ticket last November at that election, didn't he—that is the same fellow?—A. I think so.

Redirect examination by Mr. MAYNARD:

Q. Whose handwriting is this in Exhibit 24?—A. It looks like D. W. Knapp's.

Q. On the 5th of November, while this election was in progress, at times when there was a lull in business did you see Mr. Knapp writing on these books of return?—A. Yes, sir.

Q. Was he working on that considerably during the day?—A. Quite a little; yes, sir.

Q. Did you assist him in any way?—A. Well, I had the poll book——

Q. Not the statement books, but the poll book?—A. I didn't write any of this; this is what was filled out here.

Q. Did you fill this out?—A. That is Mr. Knapp's writing.

Q. Now, where did you find the election seal after the election? Who was it left in charge of?—A. Mr. Bacon had the seal.

Q. That seal, as far as you know, was left with Mr. Bacon?—A. Yes, sir.

Q. Where is it now?—A. I have it.

Q. Do you know anything about the sealing of the ballot box after the ballots were counted? Were you present?—A. No, sir.

Recross-examination by Mr. ADAMS:

Q. All the filling in that Mr. Knapp did on the day of election of the 5th of November was simply the oaths of the different inspectors and different places who took the oaths there to participate in the carrying on of that election. Isn't that true?—A. Well, I couldn't swear he did. I saw him writing.

Q. You don't know what he wrote?—A. No, sir.

Q. You each had to keep a poll book that day, did you?—A. Yes, sir.

Q. You had one and Mr. Knapp had one?—A. Yes, sir.

Q. When a voter came in to vote you wrote down his name?—A. Yes, sir.

Q. In the book you kept?—A. Yes, sir.

Q. Mr. Knapp sat there and had a similar book, and he was sitting there and writing in his poll book the name of a voter every time one came in?—A. Yes, sir.

Q. So that while the voters were coming in there were your duties and Mr. Knapp's to keep this poll book and enter the names?—A. Yes, sir.

Q. Of every voter who cast a ballot there?—A. Yes, sir.

Q. Those were your duties during the time the voting was going on?—A. Yes, sir.

Q. And those were the duties of Mr. Knapp?—A. Yes, sir.

Q. That is what you did?—A. Yes, sir.

Q. And that is what Mr. Knapp did, is that correct?—A. Yes, sir.

Q. On the statement books the votes received opposite the names of the respective candidates could not very well be written in there until after they got through with the count, could they?—A. No, sir.

Q. So they were not written in there, filled in there, up to the time you left the voting place, were they?—A. That is not my writing.

Q. You could not fill in the number of votes that any candidate got until the count was completed, could you write them in, in words as it is written in the statement book Exhibit 3 and have it correct?—A. It didn't look as though you could.

Q. You could not and have it correct?—A. No, sir; not until you were through with the count.

Q. It could not be done there in Exhibit 24 could it, and have it correct anyway where it shows the number and the words written out in longhand, William Livingstone, elector, written opposite his name and written out in longhand "131" that could not be written out opposite any candidate's name until the count was completed?—A. I don't claim so.

Q. It could not be done and have it correct?—A. No, sir.

Q. The fact is, it would all have to be counted before they could obtain and have it correctly show what occurred in that regard, would it not?—A. Yes, sir.

(Whereupon the hearing was adjourned until 9 o'clock a. m. Friday, March 21, 1913.)

FRIDAY, MARCH 21, 1913—9 O'CLOCK A. M.

A. B. HOYT, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. You live in Bellevue Township?—A. Yes, sir; the village.

Q. How old are you?—A. I am 70 years old.

Q. How many years have you lived there?—A. Thirty-three years last fall.

Q. Were you a resident of that township at the time of the last general election?—A. I was.

Q. In 1912?—A. Yes, sir.

Q. Did you vote there at the polling place that day?—A. I did.

Q. What time of day did you vote?—A. I voted about half past 8 in the morning.

Q. How long did you remain in the polling place?—A. Just to vote and walk right out.

Q. Were you back to that polling place at any time that day?—A. Not at all.

Q. What is your business?—A. Fire insurance and real estate a little.

Q. Have you held some official positions in the county?—A. Yes, sir.

Q. What were they?—A. I have been treasurer of the township and constable years ago.

Q. The contestant produced some evidence here that you accompanied Orrin Kimberly, a blind gentleman, to the polls that day and that you accompanied him to the voting booth and passed through it; I don't just remember; is that true?—A. No, sir.

Q. Do you know anything about Mr. Kimberly being there that day?—A. I didn't see him.

Q. The contestant has introduced some evidence to the effect that you were working for John M. C. Smith that day for Congress outside of your voting; did you work for anybody for Congress?—A. I worked for the straight Republican ticket.

Q. Did you work especially for John M. C. Smith?—A. No, sir.

Q. Did you solicit any about the polling place or anywhere near it for any votes for John M. C. Smith?—A. Not at all.

Q. Did you solicit any votes for him at all anywhere?—A. No, sir.

Q. The contestant has produced some evidence here to the effect that you did some work for a man, digging potatoes, so he could come and vote for John M. C. Smith; is that true as he stated?—A. No, sir.

Q. Just put on the record what there was to it?—A. Frank Allen told me that Charles Whipple wanted to come down and vote but could not spend the time.

Q. What office did Allen hold?—A. He was chairman of the township committee.

Q. Of what party?—A. Of the Republican Party.

Mr. ADAMS. I object to the witness stating what somebody told him as hearsay, and as incompetent, irrelevant, and immaterial.

WITNESS. He said he wanted to vote but he would not spend the time to go and vote. There was an automobile there and I got in the automobile and went up to Whipple's, about a mile and three-quarters, and he said he could not spend the time.

Mr. ADAMS. I object to what Whipple said about not being able to spend the time as irrelevant and immaterial and hearsay.

Q. Go on.—A. He said he could not spend the time and I took his fork and dug potatoes while he came down and voted; that is all there was to it.

Q. How long did you dig?—A. Just long enough for him to ride down and vote; I presume 20 or 30 minutes.

Q. Are you acquainted with the election board that sat there that day?—A. Yes, sir.

Q. Who was the township clerk, Mr. Weed?—A. Charles Pendle.

Q. Who was the other clerk?—A. My son was one clerk of the election.

Q. I will ask you to state in a few words what sort of men they are?

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial.

A. They are first-class fellows, I think.

Q. In your opinion, would any of them commit a fraud in the casting or canvassing of the votes?

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial.

A. No, sir; I don't think they would.

Q. State whether or not they are among the best citizens of that township?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. They are first-class fellows.

Cross-examination by Mr. ADAMS.

Q. Did you see Mr. Kimberly that election day?—A. I did not.

Q. Are you sure about that?—A. Yes, sir; pretty sure.

Q. Did you help conduct anybody into the booths or voting place on the 5th of November, 1912?—A. No, sir.

Q. You evidently were working some on election day, weren't you?—A. Yes, sir.

Q. Well, were you running for any office yourself?—A. No, sir.

Q. At that election?—A. No, sir.

Q. You are a Republican in politics and were on November 5, 1912?—A. Yes, sir.

Q. You have a son?—A. Yes, sir.

Q. What is his name?—A. John L. Hoyt.

Q. He was, or is a candidate, or was a candidate, rather, about election time, the 5th day of November, 1912, for the post office down there at Bellevue?—A. Yes, sir.

Q. And you were particularly interested in the reelection to Congress of John M. C. Smith, were you not?—A. I was.

Q. Your son was acting on the board there at Bellevue, was he not, on the 5th day of November, 1912, the election board?—A. Yes, sir.

Q. He was acting in the capacity of clerk of that election, was he not?—A. He was; yes, sir.

Q. On that day?—A. Yes, sir.

Q. I suppose your son was working somewhere in the interest of John M. C. Smith?—A. Not at all.

Q. For his election, he hadn't been working at all?—A. No, sir; he is prohibited from doing it. He was a mail carrier.

Q. Whether he was or not, had he been working in the interests of John M. C. Smith for Representative in Congress?—A. No, sir.

Q. Did you do any work at all for John M. C. Smith prior to the election there last fall?—A. Not last fall.

Q. Not a thing?—A. For the Republican ticket I did.

Q. Did you hold any position in the Republican organization in the township of Bellevue?—A. No, sir.

Q. You did do some work for the Republican ticket?—A. Yes, sir.

Q. You did a little more, didn't you, for John M. C. Smith than for some of the others?—A. I never received a penny in my life.

Q. I am not talking about pennies or dollars; I am not talking about that, I am talking about work; w-o-r-k?—A. Yes, sir.

Q. Whether you did any in the interest of John M. C. Smith?—A. Personally I did not.

Q. Did you go out and talk among the people there in Bellevue or surrounding country in the interest of John M. C. Smith?—A. I did not.

Q. You didn't say a word to anybody in relation to John M. C. Smith's candidacy for the office of Representative in Congress prior to the election of November 5, 1912, during that campaign?—A. I have no doubt but I talked about it.

Q. Talked in his favor?—A. I presume I did.

Q. On election day I suppose you were out around among the people in Bellevue working, were you not, some in the interest of the Republican Party?—A. I was not out of my office until afternoon; in the afternoon I was out in the country; I was not in the building.

Q. You were working in the interest of the Republican ticket?—A. Yes, sir.

Q. What did you do in the afternoon of November 5, then?—A. I told you about digging potatoes. I went out to Section Hill, there was a gentleman I never saw, I don't know him, the boys said—

Q. (Interrupting.) Tell me what you did; I asked you what you did.

Mr. FELLOWS. Go on and tell your story, let him object.

Mr. ADAMS. I object to counsel instructing the witness to give hearsay testimony; I am examining the witness at the present time and I would like to have it understood.

Mr. FELLOWS. Make your objections upon the record.

Mr. ADAMS. I take an exception to your instructing the witness how to answer this question.

Q. I instruct you not to tell what anybody said while I am examining you.

Mr. FELLOWS. I take an exception to that; the witness can give his testimony and you can take your exceptions upon the record.

Mr. ADAMS. The witness is here to answer my questions.

Q. Tell me what you did.—A. I went up to the hill; I never saw the man, and he was out in the corn field picking up corn, and I told him we wanted him to come down and vote. I never asked him his politics, but I heard he was a Republican. If I hadn't heard that I would not have asked him, I don't think.

Q. Did you work for the Bull Moosers?—A. No, sir. He said he couldn't go. I says "You let me alone, I will pick up this corn," but he would not do that. I turned in and helped him pick up and we loaded the corn up and drove

up to the crib and unhitched the team and put them in the barn and got in the automobile, and he asked me whether his little girl could ride down, and I said yes, and he went down town and went in and voted, and I didn't go in.

Mr. ADAMS. I move that that part of the answer in which he gave what conversation occurred go out.

Q. What else did you do? I am not asking for any conversation you had with anybody. Tell what you did. I don't want the conversation.—A. That is all I did.

Q. Did it take you all the afternoon to pick up that corn and dig those potatoes?—A. I didn't go until about half past 2 or 3 o'clock.

Q. Did it take you the balance of the afternoon to do those two jobs?—A. No, sir.

Q. What else did you do?—A. I didn't do anything. I was pretty nearly tired out, and I went in the office and sat down.

Q. Working in the corn was not what you were in the habit of doing?—A. No, sir.

Q. I suppose some fellows came into your office that election day, didn't they?—A. Sure.

Q. You were in the insurance business?—A. Yes, sir.

Q. You had an opportunity to talk politics a little in the afternoon, didn't you?—A. Yes, sir.

Q. To insure the success of the Republican party you did that?—A. Yes, sir.

Mr. FRANKHAUSER. I object to the cross-examination as not pertinent to the issue and not bearing upon the issue or upon the credibility of the witness; it is aimless and pointless.

Q. You talked with a number of people on that day, didn't you, about voting?—A. I presume I did.

Q. I suppose that John M. C. Smith was discussed favorably by you with those you talked with on that election day, November 5, 1912?—A. My aim was to get all the Republican votes I could, and I did that. I am not much of a politician. I can't do much, but I did what I could.

Q. Did you see Mr. Kimberly that day?—A. No, sir; I did not.

Q. You didn't see him that day?—A. No, sir.

Q. Anywhere in Bellevue?—A. No, sir.

Q. Is there any blind men in your township besides Mr. Kimberly?—A. I think not.

Redirect examination by Mr. FRANKHAUSER:

Q. Did you tell one Frank Johnson—

A. (Interrupting.) Ed. Johnson.

Q. (Continuing.) After election, did you tell him that, or in substance, that you had worked for John M. C. Smith on election day?—A. No, sir.

ORRIN KIMBERLY, being first sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. Mr. Kimberly, you live in Bellevue?—A. Yes, sir.

Q. How long have you lived in that township?—A. Since 1833, except 13 years.

Q. How old are you?—A. I am past 81.

Q. You are suffering the misfortune of blindness?—A. Yes, sir.

Q. Totally blind, are you?—A. Yes, sir.

Q. How long have you been blind?—A. I have been totally blind about 18 years.

Q. You were blind, then, of course, on the 5th day of November, 1912—election day last fall?—A. Yes, sir.

Q. Now, how far did you live from the polling place?—A. Two blocks or three blocks; two blocks.

Q. Did they vote on the ground floor or upstairs?—A. Upstairs.

Q. Will you tell me whether you voted at that time or not?—A. Yes, sir.

Q. What time in the day?—A. It was between 12 and 1 o'clock.

Q. Who constituted your family; have you a grandson living with you?—A. Yes, sir; at that time.

Q. How old was he?—A. He was 21.

Q. Tell me on the record how you came to go to the polls; that is, how you want and who assisted you?—A. My grandson led me down and led me upstairs.

Q. When he left you, or rather did he take you in behind what is called the railing?—A. No, sir; I think not.

Q. Who took you behind the railing, if you know?—A. I couldn't tell you.

Q. Was it A. B. Hoyt?—A. Well, I couldn't tell positively; I don't think there was any talk between us. I think I called for somebody to come and help me in. I was in quite a hurry; my wife was sick.

Q. Did you talk with A. B. Hoyt that day?—A. Not that I know of; I went right back home.

Q. Would you know his voice if you heard it?—A. Yes, sir; usually.

Q. How did you get into the booth?—A. Somebody led me, but I don't know who.

Q. Did the same man lead you that marked your ballot, as far as you could tell?—A. I think it was.

Q. What did you request there?—A. I wanted to vote a Democratic ticket. I could not positively tell it was the same man that led me.

Q. If your ticket was marked as you requested, you voted a straight Democratic ticket, and for Mr. Carney for Congress?—A. Yes, sir; I think I did; I suppose I did, anyway.

Q. Did you request it, that is, make a request?—A. I can't read but my wife can, so I am not posted, and the only thing I can do is to vote a straight ticket.

Q. That is the ticket you had been voting?—A. Yes, sir.

Q. Whoever marked your ticket was in the booth with you?—A. Yes, sir.

Q. After it was marked what did you do with it?—A. He helped me out and I handed it to him and they received it.

Q. Did the man who marked it hand it to you again?—A. Yes, sir; he folded it and handed it to me.

Q. What did you do with it?—A. I carried it in and handed it to them and they took it.

Q. You don't know who that was?—A. No, sir; I supposed it was Mr. Weed.

Q. The supervisor, as you understood it?

Mr. ADAMS. I move to strike out what he supposed, as irrelevant and incompetent.

Q. You understood Mr. Weed to be the supervisor of the township?—A. Yes, sir.

Q. Now, how did you get out from behind the railing again?—A. Some man got me to the door.

Q. Who took you from him?—A. The boy that was with me.

Q. You mean your grandson?—A. Yes, sir.

Q. Is that the way you have voted for 18 years, by somebody assisting you, since you were blind?—A. Yes, sir.

Q. Did anybody ask you that day in and around the booth to vote for John M. C. Smith?—A. No; I didn't hear anybody.

Q. I mean when you went to cast your vote, did anybody solicit your vote for any candidate or any party?—A. No, sir; nobody had any chance, I guess.

Cross-examination by Mr. ADAMS:

Q. You don't know Mr. Kimberly who was in the booth with you?—A. No, sir; I couldn't tell whether more than one or not.

Q. You don't know how many were in there, if more than one or who that one or ones were?—A. No, sir.

Q. You could not tell whether the same man led you who marked your ballot, could you; you couldn't see?—A. No, sir; I couldn't tell; I don't know.

Mr. ADAMS. That is all.

HERBERT M. WEED, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Weed, where do you reside?—A. Bellevue.

Q. How long have you lived there?—A. Fourteen years.

Q. Have you any official position in the township?—A. Supervisor of the township.

Q. Were you supervisor on the 5th day of November last?—A. Yes, sir.

Q. As such supervisor, did you sit on the board?—A. Yes, sir.

Q. Who else constituted the board that day?—A. Mr. Rogers, a justice of the peace; Daniel Hall, a justice of the peace, and J. L. Hoyt was clerk, and J. Pendle, clerk of the township.

Q. Are you acquainted with Orrin Kimberly?—A. Yes, sir.

Q. How long have you known him?—A. Fourteen years.

Q. Have you known of his infirmity during that time?—A. He always has been blind since I have known him.

Q. Always been totally blind?—A. Yes, sir.

Q. Do you recollect the circumstance of Mr. Kimberly voting that day?—A. Yes, sir; I remember of his coming there to vote.

Q. Do you remember who brought him to the polling place?—A. I don't know who brought him upstairs; I didn't see him; I saw him just as he entered the gate.

Q. Did somebody assist him to go into the polling place from the gate?—A. Yes, sir.

Q. Who was that?—A. Dan Hall.

Q. A member of the board?—A. Yes, sir.

Q. What did you see Hall do?—A. Mr. Kimberly announced his name and asked for a ticket and asked for assistance, and Mr. Hall took him into the booth and led him through the booth, and Mr. Kimberly brought me the ticket, and I deposited it.

Q. Was it apparent to you at that time that Mr. Kimberly needed assistance?—A. Yes, sir.

Q. He was blind?—A. Yes, sir.

Q. Did you see whether Mr. Kimberly's grandson was there at that time?—A. I didn't see his grandson.

Q. Did you deposit the identical ballot that Mr. Kimberly gave you in the box?—A. I did; yes, sir.

Q. Were there any challengers for any of the political parties there at that time at the polling place at any time that day?—A. There was not; no sir.

Q. Any challengers appointed for any of the parties?—A. No, sir.

Q. And none acted?—A. No, sir.

Q. Was there anyone else that asked for instruction that day?—A. One Hungarian.

Q. Was he assisted or merely told how to vote, then prepared his ballot himself?—A. The man went into the booth and came out and asked for assistance, and Mr. Rogers went into the booth with him. One other man went into the booth and came out and asked how to mark his ballot, and they told him and he went back in; that is all there was to that.

Q. Was he correctly told?—A. Yes, sir.

Mr. ADAMS. I move to strike out whether he was correctly told as calling for the conclusion of the witness and as incompetent.

Q. Was there any electioneering there in behalf of any party around or in the polling place?—A. I didn't hear a word in any way.

Q. Was the election fair as far as you know and you saw?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

A. There was no electioneering that I saw in any way or nothing unfair; there were no questions asked that I heard during the day about politics in any way.

Q. Was there any discussion of politics?—A. Not a bit; as quiet an election as I ever saw in my life.

Q. After the returns were all made out, what was done with them?—A. They were sealed and handed to the clerk.

Q. Did you assist in sealing them?—A. Yes, sir.

Q. By that what do you mean?—A. I used a stamp, and I think Mr. Hall melted the wax and I stamped it.

Q. Stamped it with the seal of the township?—A. Yes, sir.

Q. And they were delivered to you by the clerk?—A. Yes, sir.

Q. In that condition?—A. Yes, sir.

Q. What do you say as to whether or not A. B. Hoyt led Mr. Kimberly up there?—A. He certainly did not.

Cross-examination by Mr. ADAMS:

Q. Somebody led him up, there is no question about that.—A. Yes; he had to be led up.

Q. There was somebody led Mr. Kimberly in?—A. Yes, sir.

Q. And into the booth?—A. Yes, sir.

Q. And from the booth through where the board of inspectors were receiving and depositing ballots?—A. Yes, sir.

Q. And the gentleman who led Mr. Kimberly from the gate into the booth, and from the booth after, I suppose, his ballot was marked to the place where the ballots were received for deposit was Mr. Hall?—A. Yes, sir.

Q. Daniel Hall?—A. Yes, sir.

Q. Dan Hall, one of the inspectors of election there that day?—A. Yes, sir.

Q. You are or were on the 5th of November a Republican in politics?—A. Yes, sir.

Q. And had been for a number of years?—A. Yes, sir.

Q. And are now?—A. Yes, sir.

Q. And Mr. Hall was a Republican; that is, on that election day, and before that, and still is?—A. As far as I know.

Q. The three members, Mr. Weed, yourself, Mr. Rogers, and Mr. Hall, you were all Republicans?—A. Yes, sir.

Q. Both of the justices of the peace who acted on that board were Republicans?—A. Yes, sir.

Q. And the clerk, what was his name?—A. Mr. Hoyt; he was a Republican.

Q. You had another clerk, didn't you; F. W. Fitzgerald?—A. Yes, sir.

Q. Who acted as clerk of that election that day?—A. Yes, sir.

Q. He was a Republican?—A. He was a Democrat.

Q. He was the only Democrat on the board?—A. Yes, sir.

Q. He assisted as clerk?—A. Yes, sir.

Q. Mr. Hall was the only man who was in the booth with Mr. Kimberly when Mr. Kimberly's ballot was marked, if marked?—A. The only man I saw go in and come out.

Q. You say there were no challengers there that day?—A. Yes, sir.

Q. Representing any political party?—A. No, sir.

Q. None were there when Mr. Kimberly voted, no challenger?—A. No, sir.

Q. Not a single one?—A. No, sir.

Q. I understood you to say that one Hungarian asked for instructions?—A. Yes, sir; asked for help; asked for instructions and one asked for help.

Q. One Hungarian asked for help?—A. Yes, sir.

Q. In marking his ballot?—A. Yes, sir.

Q. You didn't submit to him the oath that the statute requires, did you?—A. No, sir.

Q. Who gave him the help?—A. Mr. Rogers.

Q. Where did he give him that help; in the booth?—A. Yes, sir.

Q. Nobody go in besides Mr. Rogers into the booth?—A. No, sir.

Q. Did he say why he wanted help?—A. No, sir; he came out of the booth and asked for assistance.

Q. Do you remember that man's name?—A. I do not; no, sir.

Q. Could you tell us his name if you were to look over the poll book and look at the names; see whether you could fish it out?—A. I don't know whether I could or not; I don't think I could; I know the other fellow's name was Slimcox, that went in the booth and came out and started about marking his ballot; he was new on the business and asked about marking the ballot, and we told him and he went back and marked his own ballot; Slimcox his name was.

Q. Do you know what time he voted?—A. I think in the afternoon; along toward night, I should say.

Q. Well, this Hungarian that Mr. Rogers assisted, he came in and got his ballot; asked for a ballot and it was given him?—A. Yes, sir.

Q. And he went in the booth?—A. Yes, sir.

Q. And came out of the booth and asked for assistance?—A. Yes, sir.

Q. He was not blind?—A. No, sir.

Q. He was not physically incapacitated in any way that you saw?—A. No, sir; only he couldn't read; that is all.

Q. Did you or your board or any member of it there that day submit to you any oath before Mr. Rogers gave him any instructions?—A. No, sir.

Q. Mr. Rogers was the only man that went in the booth with that Hungarian?—A. Yes, sir.

Q. Did that Hungarian deposit his ballot there that day after Mr. Rogers had instructed him or went in the booth with him?—A. Yes, sir.

Q. Was it deposited in the ballot box with the other ballots?—A. Yes, sir.

Q. Was it the general ballot for candidates, including the candidates for Congress?—A. Yes, sir.

Q. That that Hungarian voted there that day?—A. Yes, sir.

Q. What did you do or were you doing as an inspector there at that particular time? Were you handing out ballots?—A. I was depositing ballots.

Q. You had charge of the ballot box, putting the ballots in as the voters handed them to you?—A. Yes, sir.

Q. Neither Hungarian asked for instructions?—A. He just asked about marking his ballot.

Q. What did he ask?—A. He just asked if he should put a cross in front of this name if he wanted to vote for that man; that is what he asked.

Q. And Mr. Hall instructed him?—A. I think it was Mr. Hall, I don't remember which one of the board.

Q. What did Mr. Hall say to him?—A. To put a cross in front of the name he wanted to vote for.

Q. Was there any oath administered to that man, to that Hungarian?—A. No, sir.

Q. The other Hungarian's name was Simcox?—A. He was not a Hungarian; that particular man was an Englishman; he has lived here quite awhile, but he only took his certificate out some two years ago. We call them all Hungarians that work down there.

Q. Mr. Hoyt voted in the afternoon, didn't he?—A. Mr. Hoyt voted in the morning.

Q. And Simcox voted in the afternoon?—A. I think Simcox voted in the afternoon.

Q. What time in the afternoon?—A. I couldn't tell you.

Q. Approximately, as near as you can tell?—A. I couldn't tell you.

Q. Two o'clock?—A. I don't know anything about it. The reason, I think, they voted in the afternoon was that most of the men there vote in the afternoon.

Q. This Hoyt that testified this morning was Dan Hoyt?—A. A. B. Hoyt.

Q. A. B.?—A. Yes, sir.

Q. What time in the afternoon did Mr. Kimberly vote?—A. It was after I got back from dinner; I went at 1 o'clock and got back about 1.30 and he came soon after, but I couldn't tell exactly when.

Q. I show you Exhibit 16—the poll book of that election there in Bellevue—and I ask you whether under the heading "List of voters" it does not appear that Orrin Kimberly, sr., was No. 439—was the four hundred and thirty-ninth man to vote according to that poll book?—A. There is O. R. Kimberly, jr.

Q. That looks like senior; is that correct? However, Orrin Kimberly, sr., voted No. 439?—A. Yes, sir.

Q. There were only 464 votes cast in that voting place on that day?—A. Yes, sir.

Q. Ed. Simcox's number on the list of voters is the one hundred and eighty-fifth man voting that day; is that correct?—A. Yes, sir.

Q. Mr. Simcox must have voted in the forenoon, didn't he?—A. I should say he did from the looks of that.

Q. So you probably were mistaken as to the time when Mr. Simcox voted?—A. It must be.

Redirect examination by Mr. FELLOWS:

Q. These Hungarians, the men you call Hungarians, were they all registered voters?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and not the best evidence.

A. If they were voters, they were registered voters.

Q. Was there anybody permitted to vote there who was not registered?—A. No, sir.

Q. These men were naturalized citizens?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. How do you know they were naturalized citizens?—A. Well, we are pretty particular about registering—

Q. (Interrupting.) No; how do you know they were naturalized citizens? Did you see their naturalization papers?—A. I did not.

Q. The only way you could tell whether they were naturalized citizens would be by order of the circuit court or some authority that had naturalized them?—A. Yes, sir.

Q. So you simply assumed they were naturalized citizens without seeing those certificates of naturalization; you simply assumed they were naturalized; is that true?—A. Yes, sir.

Q. Now, I suppose you had a registration book there to the polls that day?—A. Yes, sir.

Q. Who had charge of that?—A. I think it was Mr. Hall; I will not say.

Q. If a man who was a registered voter should come in there to vote, his name would appear there on that registration book?—A. Yes, sir.

Q. You didn't look at that to see whether these Hungarians were registered yourself, did you?—A. No, sir.

Redirect examination by Mr. FELLOWS:

Q. Were these Hungarians?

Mr. ADAMS. I object to it as irrelevant and immaterial.

A. No, sir.

Q. How long had they lived there?

Mr. ADAMS. I object to it as irrelevant and immaterial.

Q. Have you known them for some time?—A. Yes, sir.

DANIEL HALL, being first sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Hall, where is your home?—A. Bellevue.

Q. How long have you lived there?—A. Thirty-one years.

Q. Have you any official position there in that township?—A. Yes, sir; a justice of the peace.

Q. As such justice of the peace, did you sit on the board of election, the November election, 1912?—A. Yes, sir.

Q. Are you acquainted with Orrin Kimberly?—A. Yes, sir.

Q. How long have you known him?—A. Since I have been old enough to know the people around the township.

Q. You knew that on November 5 he was afflicted with blindness?—A. Yes, sir.

Q. And had been totally blind for a great many years?—A. I suppose he has.

Q. Do you remember the circumstance of his coming to vote?—A. Yes, sir.

Q. Just tell what he did.—A. I took Mr. Kimberly through a number of times. I saw him coming to the gate and I recognized him and went to the gate and took him. We had a fence along so they had to pass through a narrow passage about 6 feet.

Q. That is going in from the outside?—A. Going in through the gate they go into a narrow passage that extends on the other side of the fence to pass out the tickets. When he came into the gate I handed him his ticket and took him by the arm, he on one side of the fence and I on the other and led him to the end of the fence and then took him into the first booth.

Q. Did he tell you what he wanted to vote?—A. Yes, sir.

Q. What did he tell you?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. He said he was not posted on any of the candidates in any way and he was not able to see and was not able to read and he voted as he always had for the straight Democratic ticket.

Q. Did you mark a straight Democrat ticket for him?—A. Yes, sir.

Q. What did you do with it?—A. After I marked it I folded it up properly and gave it back to him and took him by the arm and led him through the back booths to the place to deposit his ballot.

Q. Did you give him, Mr. Weed, the identical ballot you had prepared for him?—A. Yes, sir.

Q. And that ballot was prepared exactly as he asked you to prepare it?—A. Yes, sir.

Q. Who brought Mr. Kimberly there, if you know?—A. I don't remember; I just recognized him at the gate.

Q. Did Mr. Kimberly request you to help him?—A. Yes, sir.

Q. And you did so?—A. Yes, sir.

Q. Were there any challengers there for either one of the parties?—A. No, sir.

Q. Nor any of them?—A. No, sir.

Q. Did Mr. Hoyt bring Mr. Kimberly there?—A. I didn't see him.

Q. Do you remember when Mr. Hoyt voted or remember of his voting?—A. He voted, I think, early in the morning.

Q. Did you see him at the polls again that day?—A. No, sir.

Q. Do you know these Hungarians that have been mentioned?—A. Yes, sir.

Q. How long have they been there?—A. They have worked there a number of years.

Q. Registered voters, are they?—A. Yes, sir.

Mr. ADAMS. I move to strike that out that they were registered voters as incompetent and calling for the conclusion of the witness and not the best evidence of the fact.

Q. State what occurred?—A. One of them asked for instructions and Mr. Rogers went in the booth with him. They simply stepped out of the booth after he went in there and received his ballot and asked how he should mark in front of a man's name to vote for that man and I think I answered that question, and he went back to the booth, I suppose, and voted.

Q. He marked his own ballot?—A. Yes, sir.

Q. Was there any electioneering done around or in the polls?—A. No, sir; I didn't hear any.

Q. About soliciting votes for John M. C. Smith or anybody else?—A. No, sir.

Q. Did any member of the board as far as you heard or saw?—A. No, sir.

Q. Was the election fair?—A. In every way; yes, sir.

Mr. ADAMS. I object to that question and ask that the answer be stricken out as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness and no fact stated.

Q. Who were the gatekeepers there?—A. Ed. Johnson kept the gate where they came in, and Steve Evans the other gate.

Q. What were their politics?—A. They were both Democrats.

Q. After your board had completed the canvass of the votes what did you do with the returns?—A. They were signed and sealed.

Q. Sealed in what manner?—A. By wax, melted wax, and used the township seal.

Q. I will ask you if two sets of those returns were made out, one to the county clerk and the other to the judge of probate or board of county canvassers, care judge of probate or register of probate?—A. Yes, sir.

Q. I show you Exhibit 9 and the seal on the back. Was that sealing wax put on them by your board after you had put in the returns and completed your canvass?—A. Yes, sir.

Q. Was the seal of the township impressed in the wax when it was hot?

Mr. ADAMS. I object to that as leading.

A. It was; yes, sir.

Q. And when they left the hands of the board were both of these envelopes sealed tight with the sealing wax?—A. They were.

Cross-examination by Mr. ADAMS:

Q. I call your attention, Mr. Hall, again to Exhibit 9, an envelope addressed to the board of county canvassers, care of the judge of probate or register of probate. The printing on this envelope says, "This envelope contains one return of statement of votes, the result of the election held in Bellevue Township, county of Eaton, State of Michigan," and the post-office mark "Bellevue, Mich., the 6th day of November, 1912, register." On the back of the envelope under the envelope flap or fold you will notice it says, "Rec'd unsealed by carrier No. 4, Hall"; does it not?—A. Yes, sir.

Q. When Mr. Kimberly came in that morning of that day to vote—this blind man—you started right out as soon as you saw him coming through the gate to assist him?—A. Yes, sir.

Q. Anybody on the board tell you to do that?—A. No, sir. I have done that a great many times.

Mr. ADAMS. I move to strike out the answer as not responsive to the question.

Q. You were not designated by the election board there to go in and assist Mr. Kimberly there that day, were you?—A. I don't understand the question.

Q. The board did not, or any member of the board, designate you to give help to Mr. Kimberly to vote that day, except yourself?—A. That is all.

Q. You went on your own motion entirely to give him that assistance?—A. Yes, sir.

Q. You went into the booth with Mr. Kimberly, this gentleman who was blind, to assist him, as you have stated on your direct examination, to mark a ballot?—A. Yes, sir.

Q. And marked the ballot for him?—A. Yes, sir.

Q. That ballot was deposited there and voted and was one of the ballots that was counted?—A. Yes, sir.

Q. In the count that was made of the votes cast in that voting place on that day?—A. Yes, sir.

Q. You saw that ballot deposited in the ballot box?—A. Yes, sir.

Q. Did you deposit it?—A. No, sir.

Q. Now, you had two gatekeepers there that day, I understood you to say?—A. Yes, sir.

Q. One of those gatekeepers by name was Ed. Johnson?—A. Yes, sir.

Q. I understood you to say on your direct examination that he was at that time a Democrat, as you understood it?—A. Yes, sir; as near as I could get at it.

Q. You told the attorney general that he was a Democrat?—A. He is considered a Democrat, and I consider him a Democrat.

Q. S. B. Evans was another gatekeeper there that day?—A. Yes, sir.

Q. I understood you to tell the attorney general that Mr. Evans was a Democrat?—A. I consider him a Democrat.

Q. Do you know whether he was enrolled as a Democrat just prior to that election?—A. He was; yes, sir.

Q. You did not ask either Mr. Johnson or Mr. Evans to go in the booth with you when you marked Mr. Kimberly's ballot?—A. No, sir.

Q. They were sworn, both Mr. Evans and Mr. Johnson, as gatekeepers?—A. Yes, sir.

Q. You didn't ask either of them to go into the booth when you went in to mark Mr. Kimberly's ballot?—A. No, sir.

Q. You went in alone with him?—A. Yes, sir.

Q. Nobody else was in there with you when you marked his ballot?—A. No, sir.

Q. At no time when Mr. Kimberly was in that booth that day, you say, you called no one in that booth?—A. Yes, sir.

Q. Now, where were the ballots passed out to the voters that day when they came in and asked for ballots?—A. As soon as they came through the gate they came into the little lane made by the fence, and we passed the ballots over the fence as they came in there.

Q. Were the ballots passed out by whoever did pass them out in the immediate presence of the other members of the board?—A. Yes, sir.

Q. Was there anything between the man who passed out the ballots to obstruct the view from the other inspectors of election?—A. No, sir.

Q. You instructed one Hungarian there that day, did you?—A. Yes, sir.

Q. What was his name?—A. Simcox.

Q. Where did you give him instructions?—A. He just stepped out of the booth about 2 feet from me and asked for instructions.

Q. Did he show you the ballot?—A. No, sir; and I don't know but he did.

Q. Did he have any marks on the ballot at that time he showed it to you?—A. No, sir.

Q. Didn't he mark it at all when in the booth up to the time he asked you for instructions?—A. No, sir.

Q. Did he mark it in your presence?—A. No, sir.

Q. Did he go back into the booth?—A. Yes, sir.

Q. When he brought the ballot out, did he bring the ballot out to deposit and hand it to be put in the ballot box?—A. I don't remember: that was quite a little ways to where they had to deposit the ballots.

Q. Was it within your view?—A. Yes, sir.

Q. It was where you could see if you looked?—A. I might have seen it; I don't remember.

Q. If you had been looking, you could have seen it that distance—no obstruction—so you could have seen whether he came out with the ballot or not?—A. Yes, sir.

Q. If you had been looking at the time?—A. Yes, sir.

Q. You didn't go into the booth with the other Hungarian, did you: I mean the other Hungarian?—A. No, sir.

Q. I mean the other man who asked for instructions?—A. No, sir: Mr. Rogers went in with him.

Q. Rogers went in with him alone?—A. Yes, sir.

Q. He was not sworn as to whether or not he could read the English language, was he, that Hungarian that Rogers went in with?—A. No, sir.

Q. You didn't hear anything of that kind done?—A. No, sir.

Q. Rogers just went in with him and was in the booth with him?—A. Yes, sir.

Q. And that Hungarian voted a ballot there that day, did he?—A. Yes, sir.

Q. And deposited it in the ballot box?—A. Yes, sir.

Q. It was among the ballots counted that day?—A. Yes, sir.

CORTEZ CUSHING, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. Where do you reside?—A. Carmel township.

Q. How far is that from Charlotte?—A. From where I live?

Q. Yes.—A. About 4½ miles.

Q. How long have you lived in Carmel township?—A. Practically all my life.

Q. How old are you?—A. Thirty-five.

Q. You are a Democrat in politics?—A. Yes, sir.

Q. And was on the 5th of November, 1912?—A. Yes, sir.

Q. And voted a Democratic ticket?—A. I did.

Q. Were you subpoenaed by Mr. Carney when he was putting in his evidence in this case?—A. I was.

Q. After being interviewed you were not sworn by the other side?—A. No, sir.

Q. You attended the taking of the testimony, did you?—A. I was here two days, I think.

Q. Now, what did you start out to do there that day, what official position did you hold there that day, on election day, November 5, 1912?—A. I was the challenger for the Democratic Party.

Q. In the forenoon; you were there all the forenoon, were you?—A. Yes, sir.

Q. Inside of the railing?—A. Not inside of the railing.

Q. Not where they voted?—A. No, sir.

Q. You were not outside?—A. Yes, sir.

Q. You understood you had a right to be inside?—A. I was inside of the railing when someone asked for help.

Q. Speaking about the afternoon there, what did you do in the afternoon?—

A. I was sworn in as an inspector and helped count the ballots.

Q. Did you sign the book as such?—A. Yes, sir.

Q. Who swore you?—A. Mr. Huber.

Q. Who was he?—A. He was a justice of the peace.

Q. Who else were sworn there as an additional inspector?—A. William Clements.

Q. Was there anybody else sworn in?—A. Not that I know of.

Q. Now, what was the occasion of swearing you and Clements in in the afternoon?—A. To count the ballots.

Q. Tell how it came up, as far as you saw and understood it.—A. I heard someone say that the ballot box was full and they had about so many to finish up the votes with. Mr. Huber asked me if I would help count the ballots if they opened the box and I said I would.

Q. Were there other people there besides the board and the clerks?—A. Yes, sir.

Q. I will ask you whether the conversation about opening the box was quite general there?

Mr. ADAMS. I object to that as leading and calling for the conclusion of the witness and incompetent.

Q. Was the talk there about the necessity that existed for opening the box?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. There was some talk; yes, sir; I heard some of that talk.

Q. Now, what kind of a box did they have that day?—A. Why, it was a metal box about 14 or 15 inches in diameter and about 2½ feet high.

Q. What is called a patent box?—A. I don't know what they call it, it was made on purpose for that.

Q. How does it work?—A. There is a crank attached with some rollers which rolls the tickets through into the box.

Q. It works something like a clothes wringer; that is, two shoulders opposed to each other?—A. On the same principle; yes, sir.

Q. You put the tickets in between the two rollers?—A. Yes, sir.

Q. Did you personally see, of your own knowledge see, whether or not that box was getting filled up?—A. Why I couldn't see in the box; no, sir.

Q. You didn't see the difficulty they had, of your own knowledge.

Mr. ADAMS. I object to his saying there was some difficulty as incompetent.

A. (No answer).

Q. Now, Mr. Cushing, who asked you to assist in the count?—A. Mr. Huber.

Q. Do you remember whether there was a man there named Julius D. Ellis?—

A. Yes, sir.

Q. Did you know him?—A. Yes, sir.

Q. Is he quite a prominent Democrat?—A. Yes, sir.

Q. What was he a candidate for last fall?—A. Register of deeds at that election.

Q. Register of deeds of the county?—A. Yes, sir.

Q. As you understood it?—A. Yes, sir.

Q. Did you hear him say anything about opening the box?—A. I heard Mr. Huber ask him what he thought about it.

Q. What did he say?

Mr. ADAMS. I object to it as incompetent, irrelevant, immaterial, and hearsay; what anybody said, particularly what Mr. Ellis may have said, if anything.

A. He said as far as he was concerned it would not make any difference with him if somebody else didn't make a kick.

Q. Was there a man named Spencer there at that time?—A. He was there some of the time through the day, I don't know whether he was there at that time or not.

Q. Anyway it was decided to open the box to make room for further voting?—A. Yes, sir.

Q. Now you and Mr. Clements were sworn in there then?—A. Yes, sir.

Q. Just tell what occurred after you were sworn in?—A. Mr. Huber and I sorted out the straight tickets and put them in separate piles and counted them, and marked the number and the parties each one was for on the back and rolled them up in rolls and laid them back.

Q. You didn't use the tally sheet for that purpose at that time?—A. No, sir.

Q. Who unlocked the box?—A. Mr. Griffin.

Q. Was he supervisor of the township?—A. Yes, sir.

Q. After you counted the straight tickets, you and Mr. Huber, then what did you do?—A. We began checking up the split tickets.

Q. Now how did you do that, who was present around that table when you did it?—A. We had two small tables there and Mr. Huber read the names off the tickets and Mr. Clements and myself kept the count in a tally book.

Q. I show you Exhibit 17 and ask you whether that is the tally-sheet book you kept or the one kept by Mr. Clements?—A. It looks like my writing.

Q. Look it through and see.—A. It appears to be my figures; yes, sir.

Q. I now call your attention to pages 12 and 13 of this book, to the words "Representative in Congress" and I will ask you whether the number of votes received by John M. C. Smith was correctly counted, 137?—A. It foots up right.

Q. Whether that is correct as you found it there that day?—A. I don't remember what we found that day.

Q. Look this over to refresh your recollection.

Mr. ADAMS. I object to the question, what he found that day, as incompetent, irrelevant, and immaterial.

Q. How many straight votes did John M. C. Smith have, from your recollection or as shown by the exhibit?—A. I have no recollection about it.

Q. The exhibit shows 70.—A. Yes, sir.

Q. How many straight votes did Claude S. Carney receive?—A. The book shows 60.

Q. Look over the tallies of the split tickets and see if that is correct as shown by the tally sheet. How many did John M. C. Smith have?—A. According to the tally sheet, 67.

Q. How many did Claude S. Carney have?—A. Twenty-two.

Q. Is that shown by the tallies I have called your attention to here?—A. Yes, sir; it is.

Q. Then, if the vote for John M. C. Smith was 137 and for Claude S. Carney 82, is that correct as to the number of votes that each received there that day in Carmel Township, as far as your knowledge of that election goes?—A. According to the book; yes, sir.

Q. According to the book, that is. Was there anything occurred there that makes you doubt the correctness of those figures?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

Mr. FRANKHAUSER. I will withdraw the question.

Q. Is 137 the number of votes which you found that John M. C. Smith received there that day growing out of the part you took in that election?—A. I don't remember anything of it, except the book—I don't remember aside from that.

Q. Have you any reason to doubt whether that is the right number or not?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

Mr. FRANKHAUSER. I will withdraw that.

Q. Did you tally correctly as the names were read to you?—A. I did.

Q. The result was 137, was it? Are those figures 137 your figures?—A. Yes, sir.

Q. Did you put them down as the result of keeping the tally there that day.—A. Yes, sir.

Q. Are those 82 your figures?—A. Yes, sir.

Q. Were those put down honestly by you as the result of your tally?—A. Yes, sir.

Q. Now, as I understand it, Mr. Huber read off the names and you and Mr. Clements kept the tally books?—A. Yes, sir.

Q. You kept one and he kept one?—A. Yes, sir.

Q. Did you get through with your 2 o'clock count, as we will call it, at the time the polls closed?—A. No, sir.

Q. You had some; about how many did you have to count, if you remember, at 5 o'clock, of the votes that were cast prior to 2 o'clock?—A. I don't remember, exactly; there were only a few left.

Q. Was there any result announced to the public there by you or anyone else in your hearing?—A. No, sir.

Q. At the time the polls closed?—A. No, sir.

Q. Did anybody, to your knowledge, get the figures from you or Mr. Clements on the tally sheets and pass it out among the public?—A. Not that I know of.

Q. Did you yourself know at 5 o'clock how it stood, except on the straight votes?—A. No, sir.

Q. Did anybody know, as far as you know, how that vote stood at 5 o'clock?—A. No, sir.

Q. In what tone of voice did Mr. Huber read the names off—a loud or an ordinary tone?—A. Loud enough so the two clerks could hear them.

Q. So you could tell from the reading. Did you keep some tab at the time so you knew how the votes stood?—A. No, sir; I could not.

Q. Now at 5 o'clock, when the polls closed, did you continue to tally until you got through?—A. Yes, sir.

Q. What did Mr. Clements do?—A. Shortly after the polls closed he had to go home, and Mr. Cole took his place.

Q. Cole and you then did the tallying?—A. Yes, sir.

Q. Did anybody assist you two in tallying?—A. No, sir.

Q. What part did Mr. Martin take after the polls closed?—A. I don't know what he did do.

Q. Who did the reading all the way through of the ballots?—A. Mr. Huber, I think.

Q. Did anybody else read that afternoon at all?—A. I don't think so.

Q. About what time did you get through with the election?—A. Do you mean counting the ballots?

Q. Yes, sir.—A. Something after 11 o'clock.

Q. Was the result declared about 11 o'clock?—A. Yes, sir; it was read off.

Q. Who read it off?—A. Mr. Huber, I think, did.

Q. Now, Mr. Cushing, was there anything occurred there at that election that was not fair and square as far as you know, as far as the count went?

Mr. ADAM. I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. As far as I know, we all did the best we could.

Q. The question is, Was there any fraud that you know of?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. Not that I know of.

Q. Were there any votes counted for Mr. Carney, as far as you participated, that he was not entitled to, or for Mr. Smith?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. Not that I know of.

Q. Did Mr. Carney, as far as you know, receive every vote that was cast for him?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. As far as I know he did.

Q. Did John M. C. Smith receive any votes that you know of that should have been counted for Claude S. Carney?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. No, sir; not that I know of.

Q. Now the board that day was made up of Mr. Griffin, the supervisor; Herbert Shaver, justice of the peace; W. L. Huber, justice of the peace; and D. C. Cole, township clerk; is that correct?—A. Yes, sir.

Q. This Wilbur C. Martin acted as clerk?—A. Yes, sir.

Q. Who else, anybody else?—A. I don't think so.

Q. Then there was Mr. Martin and Mr. Cole acting as clerks, and Mr. Griffin, Mr. Shaver, and Mr. Huber acting as inspectors?—A. Yes, sir.

Q. Then they swore you and Mr. Clements in as two additional inspectors?—A. Yes, sir.

Q. As I understand you now, Mr. Cushing, you had nothing to do with the receiving of the ballots or distributing them among the voters or anything of that kind?—A. No, sir.

Q. You did nothing about the count except you and Mr. Huber straightened out and counted the straight ballots?—A. That is all.

Q. You had nothing to do with counting the split tickets?—A. Nothing but tally.

Q. You didn't touch the tickets yourself?—A. No, sir.

Q. That was done by Mr. Huber?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. I understood you to say, Mr. Cushing, that Mr. Huber started in when you began the count about 2 o'clock that day and read off the ballots?—A. Yes, sir; he read off the split ballots.

Q. Did he do all the reading that was done there up to the time the polls closed, or did some other man take his place in reading?—A. No, sir, I think he did it all.

Q. I understood you to say that after you got through the count at night about 11 o'clock, you think Mr. Huber read off the result?—A. Yes, sir.

Q. Aloud?—A. Yes, sir.

Q. Did he read the vote that each candidate had received there that day?—A. Yes, sir, he did.

Q. How long did it take him to read it?—A. I don't remember how long it took; he read the figures off so we could copy them down in the books, the totals.

Q. So you could copy them down on the books?—A. Yes, sir.

Q. You and Mr. Clements were the only fellows who had the figures, were you? How could he read the figures off without you first gave them to him, you had the tally, didn't you?—A. We had the tally sheets.

Q. You had the figures too, didn't you?—A. I think we did.

Q. Then Mr. Huber could not very well have given you the figures when you and Mr. Clements kept the tally and had the figures?—A. It is my recollection each one figured up the books and compared them to see they were alike.

Q. Who do you mean by each one?—A. Myself and Mr. Cole, then I think Mr. Huber took those numbers down as we went along; then we copied them in as he read them off, comparing them first.

Q. When you were sworn in as inspector, as you say you were, Gordon Griffin was there acting as inspector?—A. Yes, sir.

Q. And was Mr. Shaver pretending to act as inspector there at the time you were sworn in?—A. Yes, sir.

Q. Who else was pretending to act as inspector there at the time you were sworn in?—A. Mr. Huber.

Q. And Mr. Cole was acting at the time you were sworn in as one of the clerks?—A. Yes, sir.

Q. He was the township clerk?—A. Yes, sir.

Q. Wilbur C. Martin at the time you were sworn in was also acting as clerk there, was he not?—A. Yes, sir.

Q. So D. C. Cole and Wilbur C. Martin at the time you were sworn in as an inspector were acting as clerks of that election?—A. Yes, sir.

Q. Gordon Griffin, W. L. Huber and Herbert Shaver were assuming to act as inspectors of that election?—A. Yes, sir.

Q. When you were sworn in as an inspector, there was a full board there, as you understood it, election board?—A. Yes, sir.

Q. Every man was there in his place?—A. Yes, sir.

Q. Who did you say asked you to act as inspector?—A. Mr. Huber.

Q. That is one of the men who was acting as inspector prior to that time on that day, asked you to act as inspector?—A. Yes, sir.

Q. There was some people there I suppose in the voting place at the time you were asked to act as inspector?—A. Yes, sir.

Q. That is, I mean by that question, there were others there, bystanders, electors of the township of Carmel were in that voting place at the time Mr. Huber asked you to act as inspector?—A. Yes, sir.

Q. At the very time you were sworn in as inspector?—A. Yes, sir.

Q. There were other people there, electors, who were not members of that election board who were standing around when you were asked to act as inspector?—A. Yes, sir.

Q. And at the time you were sworn in as an inspector?—A. Yes, sir.

Q. Now, the people did not at any time elect you as an inspector—that is, the electors, men who were not acting on the election board, did not elect you to act as inspector?—A. No, sir.

Q. The people who were there, electors, those who were not acting upon the election board up to that time, did not then and there elect William Clements to act as inspector there that day?—A. No, sir.

Q. Who requested Mr. Clements to act?—A. I don't know.

Q. Was there any vote taken there by the bystanders, electors, who were not members of that election board, any motion made that you or Mr. Clements or either one or both of you should act as an additional inspector or inspectors there that day?—A. No, sir.

Q. So that yourself and Mr. Clements acted and were sworn in as inspectors there that day on the request of W. L. Huber, one of the then inspectors of that election?—A. Yes, sir.

Q. That is all the action that was taken to select you two men as inspectors of that election, namely, the request of W. L. Huber?—A. That is all I know of.

Q. Upon his request, and that alone, yourself and Mr. Clements were sworn in by W. L. Huber to act as inspectors of that election?—A. Yes, sir.

Q. That is correct?—A. As far as I know; yes, sir.

Q. Mr. Clements, you say, went home shortly after 5 o'clock?—A. Yes, sir.

Q. Do you know how many ballots there were in this ballot box you opened about 2 o'clock that afternoon when you began to count?—A. I don't know.

Q. Well, approximately, can't you give us any idea?—A. I don't believe I can come very near to it.

Q. There were 239 votes cast there that day, were there not?—A. Something like that.

Q. I call your attention to Exhibit 27, which is the poll book you used there that day and ask you to state from that book now, look at it, on page 10, whether the total number of votes cast there that day for Representative in Congress and other candidates for office were only 239?—A. Two hundred and thirty-nine.

Q. That is correct, is it not, as shown by the book?—A. Yes, sir.

Q. And that according to your best recollection was the total number of votes that were cast there that day for the candidates, for any of the candidates for office at that election up to the time the polls closed at 5 o'clock?—A. Yes, sir.

Q. What part of those 239 votes would you say, your best recollection is, were contained in this ballot box that you opened at 2 o'clock that afternoon and began to count?—A. About three fourths of them.

Q. You saw this ballot box opened at 2 o'clock, did you?—A. Yes, sir.

Q. When it was unlocked, who unlocked it?—A. Mr. Griffin.

Q. Did you look in before the ballots were taken out to see how full it was?—A. I could see when they had the cover off.

Q. When they took the cover off, was it full or not?—A. They laid in there, I thought it was not near full; a few more could have been put in.

Q. As counsel asked you when the ballots were put in there, they were pulled in with a couple of rollers?—A. Yes, sir; little wheels, I don't remember.

Q. If the ballot was put into those rollers, there was a little handle or crank to turn so that would grind the ballots through those rollers into the box?—A. Yes, sir.

Q. The tendency of that would be to crowd the ballots down as additional ballots were put through those rollers?—A. Yes, sir.

Q. You could crowd that ballot box more full of ballots with those rollers and the crank to grind them through, in your judgment, than you could get in a ballot box that didn't have those rollers in; simply had a slot to shove the ballots down in; it would force them through and pack them down?—A. I think it would.

Q. You finished the count there about 11 o'clock at night?—A. Yes, sir; about that.

Q. Did you enter all the tallies or any of the tallies that appear here opposite the name of John M. C. Smith and Claude S. Carney, for Representative in Congress? I mean the marks, now—not the figures.—A. I think I did; yes, sir.

Q. Are the figures opposite the names of John M. C. Smith and Claude S. Carney, who were candidates, respectively, for Representative in Congress, in your handwriting or not?—A. I think they are.

Q. Where were the returns signed that day, if you know?—A. I don't know.

Q. What time was Exhibit 27, the poll-book certificate, made out?—A. In the afternoon after we finished counting.

Q. About what hour?—A. About 11 o'clock.

Q. When you finished counting that night about 11 o'clock was Gordon Griffin there?—A. I think he was.

Q. Was W. L. Huber there?—A. Yes, sir.

Q. Was Herbert Shaver there?—A. I think so; yes, sir.

Q. I notice on this certificate, on this particular Exhibit 27, that the certificate was not signed by W. L. Huber, but was signed by Gordon Griffin, Cortez Cushing, and Herbert Shaver. Do you know why Mr. Huber did not sign that certificate that night when you got through with that count?—A. I do not.

Q. Mr. Huber was one of the inspectors, as I understand your testimony; he helped count from beginning to the end the votes that were cast there that day.—A. He and myself.

Q. Mr. Griffin didn't help count all the votes?—A. No, sir.

Q. He didn't help count any of the votes that were counted from 2 o'clock, or that were counted from 2 o'clock that afternoon up until 5 o'clock that afternoon when the polls closed?—A. No, sir.

Q. Mr. Shaver didn't help count any of the ballots that were counted there from 2 o'clock in the afternoon up to the time the polls closed at 5 o'clock that afternoon?—A. No, sir.

Q. Mr. Cole didn't—the township clerk, D. C. Cole, didn't help count a single ballot from 2 o'clock that afternoon up to 5 o'clock that afternoon, did he?—A. No, sir.

Q. Did you help count the ballots that were counted after 5 o'clock?—A. I did.

Q. And up to the time the count was finished there?—A. Yes, sir.

Q. You simply kept the tally?—A. Yes, sir.

Q. That is what you mean by helping to count?—A. Yes, sir.

Q. All you did from beginning to end, as far as the counting of the ballots was concerned, on that election day was simply to put down the tallies that somebody else called off?—A. I helped count the straight ballots when we first commenced at 2 o'clock.

Q. Those were the only ones you looked over and counted?—A. Yes, sir.

Q. You didn't look over the ballots yourself?—A. No, sir.

Q. So whether they were called off correctly or not you don't know?—A. No, sir.

Q. W. L. Huber was the only member of that board that day who saw all the ballots that were cast there when you were counting them?—A. I think so.

Q. Now there were, as appears by the tally sheet book of that election there in that township that day, Exhibit 17, John M. C. Smith had 70 straight votes for Representative in Congress, didn't he?—A. Yes, sir.

Q. It appears by that same exhibit Claude S. Carney had 60 straight votes for Representative in Congress?—A. Yes, sir.

Q. Now those straight votes for John M. C. Smith and Claude S. Carney were the only ballots that you examined there that day?—A. I didn't examine all of those.

Q. You did not?—A. No, sir.

Q. Now, as appears by this Exhibit 17, opposite the name of John M. C. Smith, Representative in Congress, it appears that he had 67 split votes?—A. Yes, sir.

Q. Now, Claude S. Carney, opposite his name as a candidate for Representative in Congress, by this Exhibit 17, it appears that he had 22 split votes?—A. Yes, sir.

Q. Now those 67 votes for John M. C. Smith—split votes—and 22 split votes for Claude S. Carney, you didn't examine those ballots at all, did you?—A. No, sir.

Q. Somebody else examined them; Mr. Huber, or some one else who called off to you and you put down the tallies?—A. Yes, sir.

Q. You didn't examine the ballots?—A. No, sir.

Q. For those split votes?—A. No, sir.

Q. Were any instructions given to any voters there that day?—A. Yes, sir.

Q. Let us see; before 2 o'clock you acted as challenger for the Democratic Party?—A. Yes, sir.

Q. At that voting place?—A. Yes, sir.

Q. What time did you get there in the morning?—A. At 7 o'clock.

Q. Were you there continuously from the time you got there at 7 o'clock in the morning of that day up to the time you began to act as inspector at 2 o'clock in the afternoon?—A. Except one hour at noon.

Q. Did the board adjourn an hour at noon?—A. Yes, sir.

Q. What did they do with the ballot box when they adjourned at noon, that is, the ballot box in which the ballots had been deposited up to that time?—A. I think some of the election board put inside the books what we used.

Q. Were they all put inside of the box?—A. I couldn't say as to that.

Q. Who put them inside of the box, or any of them?—A. I think Mr. Griffin did.

Q. How did they get them inside of the ballot box?—A. It was unlocked.

Q. Who unlocked the ballot box?—A. Mr. Griffin.

Q. Was the ballot box locked when the books were put in?—A. I think so.

Q. Do you know who locked it?—A. He did.

Q. Was the ballot box in any way sealed when they went away to dinner that day?—A. I couldn't say whether it was or not.

Q. Did you see it sealed, was any seal put over it?—A. I don't remember of seeing it.

Q. Were you there when the election opened up after dinner?—A. Yes, sir.

Q. Did you see any seal taken off the ballot box that day, when they opened up the polls again after dinner?—A. I have no recollection of it.

Q. How close were you to the ballot box when the board got back after dinner?—A. Maybe 10 feet away.

Q. You say you were within 10 feet of it?—A. Yes, sir.

Q. Did you see anybody unlock it to get the books out?—A. Yes, sir.

Q. Who unlocked it?—A. Mr. Griffin.

Q. Did you notice before he unlocked it that he or anybody else removed any seal from this slot or opening in the ballot box through which the ballots were put?—A. I don't remember.

Q. You didn't see any such thing?—A. I didn't see it; it might have been.

Q. You were looking at it and saw him unlock it?—A. Yes, sir.

Q. Now, you said some men applied for instructions there that day?—A. Yes, sir.

Q. How many voters applied for instructions that you know of?—A. I think about four or five.

Q. Did you know the men?—A. Part of them.

Q. Were any of those men you say applied—voters that applied for instructions—there that day physically incapacitated in any way you could observe?—A. I think one was partially blind.

Q. Who was that one?—A. I think Samuel Clements.

Mr. FRANKHAUSER. This examination is not within the issue of contest and can not be raised here at this time under this notice of contest. We have had no opportunity to prepare any defense on the question of voters not being sworn in in the township of Carmel and I think there should be a limit to this examination somewhere between the notice of contest and the answer.

Mr. ADAMS. This was brought out on your direct testimony; we ask for an amendment. We claim the right to put it in anyway, whether covered or not.

Mr. FRANKHAUSER. There should be some sort of an understanding about the scope of the inquiry.

Mr. ADAMS. We claim the right to put it in and ask an amendment to our petition.

Mr. FELLOWS. Well, we will object to that.

Mr. FRANKHAUSER. If you had any amendment to make you should have made it before you rested your side.

Mr. ADAMS. You have notice now that we are going to claim the right to do that. It is difficult to get at a lot of the facts in this matter and we are not able to get them sometimes before the witnesses go upon the witness stand.

Mr. FRANKHAUSER. I don't apprehend that this can be looked upon as a fishing excursion here; you can not get on to new points and then incorporate them in your ground of contest; there should be a limit, it seems to me, somewhere.

Mr. ADAMS. You have your witnesses here.

Mr. FRANKHAUSER. We did not subpoena any witnesses on this issue you are now raising.

Mr. FELLOWS. I don't think you have any right to file an amended contest; you made your ground of contest when you filed your notice and that ends it; in other words, I understand you can not go out on a fishing expedition and draw out during the taking of testimony with the hope of finding something favorable.

Mr. ADAMS. The laws of Michigan are very liberal as to amendments and sometimes the Federal authorities, by comity, apply the law that exists where a dispute arises.

(Whereupon the hearing was adjourned until 1 o'clock p. m.)

CORTEZ CUSHING, recalled for further cross-examination by Mr. Adams, testified as follows:

Q. I started to ask you something about instructions to different voters there in that precinct on November 5, 1912, and you stated one man and gave his name. was partially blind?—A. Yes, sir.

Q. Who asked for instructions?—A. Yes, sir.

Q. His name was what?—A. Clements.

Q. Had you known him for some time?—A. I don't think I ever knew who he was until that day.

Q. Could he see at all?—A. Yes, sir; he could see some.

Q. Could he see to write?—A. I couldn't remember whether he could see well enough to write or not.

Q. Was there any oath administered to him?—A. No, sir.

Q. Did he vote there that day?—A. He did.

Q. Was the ballot he presented there deposited in the ballot box?—A. I think it was; yes, sir.

Q. And counted with the other ballots?—A. Yes, sir.

Q. Who gave him the instructions?—A. Myself and Mr. Huber.

Q. You were acting as challenger when that was done?—A. Yes, sir.

Q. Were there some other voters who asked for instructions that day?—A. Two or three of them did.

Q. Was there any oath administered to them or any one of the other two or three?—A. No, sir.

Q. Were they physically incapacitated from anything you observed so they could not mark their ballots?—A. I don't think any of the rest were physically incapacitated; no.

Q. Were they English-speaking people, or don't you know?—A. Yes, sir.

Q. Was there any oath administered to them at all before the instructions were given them?—A. No, sir.

Q. Were they physically able to mark their ballots themselves without any assistance, from your observation of them?—A. They were physically able, I think, except not being educated enough so they could understand and read the instructions at the head of the ballot.

Q. But no oath was given to them at all?—A. No, sir.

Q. Instructions were given them and each one of them?—A. Yes, sir.

Q. Who instructed them?—A. Myself and Mr. Huber.

Q. In each instance were you present?—A. Yes, sir.

Q. Now, when Mr. Huber was calling off from the ballots when you began counting at 2 o'clock that afternoon, he called off so loud, didn't he, that you heard him?—A. Yes, sir.

Q. He would read off, for example, John M. C. Smith or Claude S. Carney, or anybody else who got a vote on the ballot he was reading from; he would call that name out aloud?—A. Yes, sir.

Q. I suppose people were coming in and voting during the time he was calling off?—A. Yes, sir.

Q. How close did the people come to where Mr. Huber was calling off?—A. They passed right behind us.

Q. Within how many feet of you?—A. Right behind our chairs; right close.

Q. Within 4 or 5 feet?—A. Yes, sir.

Q. Did they pass by Mr. Huber as he was reading from the ballots?—A. Yes, sir.

Q. Was it possible for the voters, as they passed by Mr. Huber, to see the ballot he was reading from?—A. I suppose they could look over his shoulder.

Q. Were there any people standing around there watching the count that afternoon before 5 o'clock? When I say "people" I mean those who were not sworn in in any capacity to act on that election board, any electors that were not officers of the election.—A. I didn't notice anybody but Mr. Case.

Q. Who was he?—A. He pretended to be the Republican challenger.

Q. When did he claim that?—A. I didn't hear anything of it until the other day when he was in town here.

Q. When his testimony was taken?—A. Yes, sir.

Q. Was that the first you had heard that he had assumed to act there that day as challenger for the Republican Party at that election?—A. That is the first I knew of it; yes, sir.

Q. Well, how close did the voters come to where Mr. Huber was calling off when they came in to get their ballots?—A. It was to the other side of the room, 25 or 30 feet away.

Q. Well, now, counsel asked you whether you could tell the result from your tally sheet, as far as you had tallied?—A. Yes, sir; as far as I had tallied I could.

Q. The first thing you did you counted the straight tickets that you took out of that ballot box?—A. Yes, sir.

Q. That is, before 5 o'clock?—A. Yes, sir.

Q. Then you went ahead and counted the split votes?—A. Yes, sir.

Q. So at any time if anybody had looked at your tally book, or you did yourself, you could see how many votes were cast for John M. C. Smith, how many straight votes, out of that tally book and how many split votes you had gotten up to that time?—A. The straight votes were not put on the tally book at that time.

Q. As you counted the split votes, every time there was a split vote for John M. C. Smith for Representative in Congress, you put down one additional stroke on the tally sheet for John M. C. Smith?—A. Yes, sir.

Q. And every time there was a vote for Claude S. Carney for Representative in Congress you put down on your tally book a split vote for Mr. Carney?—A. Yes, sir.

Q. So that if anybody had looked at your tally sheet book while you were counting there they could have seen how many split votes were counted for John M. C. Smith and how many for Claude S. Carney?—A. Yes, sir.

Q. Voters coming up there could hear you calling off each time a vote was called off for John M. C. Smith or Claude S. Carney?—A. They could; yes, sir.

Q. This man Case, I suppose, was watching that, wasn't he?—A. Yes, sir.

Q. He was there as challenger for the Republican Party?—A. Yes, sir.

Q. He claims he was there as a challenger for the Republican Party, but you didn't know that day that he was, did you?—A. No, sir.

Q. Did he make any claim there that you heard that day, or say anything that he was there as challenger for the Republican Party?—A. I didn't hear him say anything.

Q. What time did he get there that day?—A. He was there quite early in the morning, about the time the rest were.

Q. Was he, or not, around there the whole day?—A. He was in there the most of the time.

Q. Sometimes he would go out?—A. I think so; yes, sir.

Q. There was nothing to prevent him after you fellows began counting there at 2 o'clock from going outside and telling any voter how the vote stood up to that time, as shown by your tally book from the straight votes that had already been counted, was there?—A. No, sir.

Q. In other words, after you opened up your tally books and began counting at 2 o'clock, say at 4 o'clock that afternoon, after you had counted two hours, there was nothing to prevent him from going out and telling any outsiders or anybody how many votes—how many straight votes—there were up to that time for John M. C. Smith and how many split votes for John M. C. Smith, was there?—A. No, sir.

Q. That information you had right there and it was to be had all the time as you went along counting those ballots?—A. Yes, sir.

Q. That was true of every candidate whose name was on that ticket?—A. Yes, sir.

Q. That is, at any time between 2 and 5 o'clock when you were counting those ballots, there was nothing to hinder this man Case or anybody else from listening or seeing that tally book and going out and communicating what that tally book showed to the people outside who hadn't voted yet?—A. No, sir.

Q. Was this man Case behind the railing up to the time you began counting the ballots at 2 o'clock?—A. No, sir; he was not inside of the railing except to vote.

Q. He came in and voted and then went outside of the railing—A. Yes, sir.

Q. When did he first come inside of the railing?—A. Shortly after we commenced to count.

Q. Shortly after 2 o'clock?—A. Yes, sir.

Q. Where were you when you first went in there in the morning after the board organized; were you inside of the railing or outside?—A. I was outside.

Q. Did you go inside before you were sworn in as an inspector?—A. Yes, sir; to give instructions to the voters.

Q. Did Mr. Case go into the booth at any time when instructions were given to voters?—A. No, sir.

Q. Did he make any claim there that day that he was entitled to go in the booth with the voters at the time instructions were given to those several voters?—A. I didn't hear him.

Q. When Mr. Huber read the names off there, from 2 to 5 o'clock that day, he was the only one who read the names off?—A. He was.

Q. Nobody was looking over the ballots when he read them off, was there?—A. I don't know whether Case did; he may have looked over his shoulder part of the time; he stood behind all of us.

Q. You said something, as I understood you, on your direct examination, that you didn't use the tally sheet; did you use the tally sheet up to 5 o'clock?—A. Yes, sir.

Q. So you began using the tally-sheet books when you began counting, when you opened that ballot box at 2 o'clock?—A. As soon as we began to count the split ballots.

Q. The tally-sheet book did not show that you had been tallying the straight ballots on there?—A. No, sir.

Q. They were counted up and the total number was the only thing of the straight ballots made on the tally-sheet book?—A. Yes, sir.

Q. Then, when you began counting the split ballots you put down a tally for every man who got a vote on any and all of the ballots after you commenced counting the split ballots?—A. Yes, sir.

Q. Now, something was said about a man named Ells, as I understood you, on your direct examination. Ells protested against them opening that ballot box and commencing that count at 2 o'clock, didn't he?—A. He said as far as he was personally concerned it would be all right, if somebody else didn't make a holler or kick, or something like that.

Q. Did he tell them it was not, in his judgment, legal to do it?—A. I don't think he did.

Q. Can you recollect just what he did say?—A. That was all I heard him say when Mr. Huber asked him if it would be all right to open the box; he said as far as he was personally concerned he would not make any kick, but somebody else might; that is what he said.

Q. Was there any adjournment taken at supper time there by the board?—A. No, sir.

Q. How did they get their supper, if they got any?—A. Part of us had a lunch that was brought in and while we were eating there, one or two of the other members went to Ellsworth's and got supper up there.

Q. While the others were gone to supper, yourself and those who had their lunch there, and ate it there that night, did you go on with the count while the others were absent?—A. No, sir.

Q. You stopped the count while they went away?—A. Yes, sir.

Redirect examination by Mr. FRANKHAUSER:

Q. Mr. Cushing, about the time you got through—you stated about 11 o'clock—do you mean by that that was the time you got through counting or that was the time you were all done?—A. That was the time we were all done and everything finished up.

Q. The count had been completed then some time before 11 o'clock?—A. A little while before; I think about half past 10 o'clock.

Q. Were those returns all signed up before Mr. Griffin or any of them went away from the polling place?—A. I think they were, but I am not positive.

Q. The counting was done and the blanks were all filled out and signed, were they, or don't you remember about that?—A. I couldn't remember.

Q. In response to Judge Adams's question you thought the old boxes we used to have had a slot in and you could, by a ruler or any other thin piece or substance of any kind, jam those ballots down in there and get them out of the way of the slot?—A. I don't know much about that.

Q. But, anyway, in these new boxes there was no way to open it and crowd the tickets down except as they were crowded down by the machine?—A. No, sir.

Q. As a matter of fact, whether it was an old box or a new box, the box was pretty nearly full at 2 o'clock in the afternoon, was it not?—A. Yes, sir.

Q. If you had cast two-thirds of the vote at that time or three-fourths, we will say, they had cast about 175 or 180 votes, and they would have 60 or 70 more to cast. Do you think that box would have held 60 or 70 more by putting them in in that way?—A. I don't know whether it would or not.

Q. As far as you understand it, it was simply a question of judgment, was it not?—A. Yes, sir.

Q. There was nothing about it that looked crooked to you was there?

Mr. ADAMS. I object to that as irrelevant and immaterial.

A. No, sir.

Q. Now, there were just three voters there that asked for instruction—one, pretty nearly a blind man, and two others, is that about your recollection?—

A. I couldn't tell the exact number; I thought four or five that asked questions.

Q. How many ballots did you see marked?—A. I don't think I saw more than three or four marked.

Q. Did you see more than two marked?—A. Yes, sir.

Q. When those two were marked you were present both times; it is true that every ballot that was marked you were summoned to be present?—A. Yes, sir.

Q. Was Mr. Chase present, too?—A. No, sir.

Q. He was the Republican challenger, as you understand it now?—A. Yes, sir.

Q. But the election inspectors saw them marked. When the two or three or four were marked, you were present and saw that it was done right?—A. Yes, sir.

Q. I will ask you whether the ballot was marked as the voter requested it should be?—A. Yes, sir.

Q. Something was said about assistance; do you understand the difference between a voter asking for assistance and one asking for instructions?—A. Yes, sir.

Q. When you say three or four or five voters asked for assistance, you mean, do you, that they wanted their ballots marked by somebody else?—A. No, sir; not all; altogether there were four or five, I think, that asked either for assistance or instructions.

Q. As far as marking the ballots were concerned, can you remember of over two or three?—A. I don't think I remember of only two who required some assistance in marking them.

Q. The others simply wanted to know how to vote to express their intention?—A. Yes, sir.

Q. You had been on election boards previously?—A. No, sir.

Q. You didn't challenge any of those votes that day?—A. No, sir.

Q. You saw no occasion to, did you?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

Q. Did you see any occasion to challenge any votes?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial whether he saw any or not; that would not change what the law required to be done.

A. I did not.

Q. Now, something was said about those voters who asked for assistance not being sworn. You didn't challenge any of them because they were not sworn, did you?—A. No, sir.

Q. Your town is quite strongly Republican?—A. Yes, sir.

Q. Now, did your tally sheet in the afternoon from 2 o'clock until 5 o'clock show the straight vote?—A. No, sir.

Q. It simply showed the split vote?—A. Yes, sir.

Q. In response to Judge Adams's question, if anybody by looking at the tally sheet could see the total, that was not true up to 5 o'clock, was it?—A. I don't think I testified to that.

Q. I didn't know whether you understood the question or not.—A. No, sir.

Q. Mr. Case nor nobody else saw the result of the straight count?—A. Not that I know of.

Q. In other words, you counted the straight ballots and rolled them up and marked the number on the back; what did you do with them then?—A. We laid them back in a bookcase or cupboard there.

Q. Did anybody consult those ballots that you saw?—A. No, sir.

Q. Then, I say, your tally sheet up to 5 o'clock showed nothing but the split votes?—A. That is all.

Q. Something was asked you about what Mr. Case could do or anybody else could do, as a matter of fact no news got spread around there how the vote stood?—A. Not that I know of.

Q. Did Mr. Case, to your knowledge, carry news out how the vote stood?—A. Not that I know of.

Q. Did you see Mr. Case all the time?—A. No, sir.

Q. Was he where you could see him?—A. He was behind us, I could have seen him if I looked around.

Q. He was right there in the voting place?—A. I don't know whether he was all the time or not.

Q. This man Ells has lived there a good many years?—A. Yes, sir.

Q. He has been pretty active in Democratic politics?—A. Yes, sir.

Q. He has been township clerk 20 years, hasn't he—something like that?—A. He has been supervisor part of the time and part of the time township clerk.

Q. Whatever was done in politics—Democratic politics—Mr. Ells had a good deal to do with it?—A. Yes, sir.

Q. He was always active, wasn't he?—A. More or less so; yes, sir.

Q. On election days worked on the board, etc.; in other words, state whether or not your knowledge of him was such as to know he was an old member of the election board and had been for years.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, calling for the conclusion of the witness and no fact.

A. He has been on the board more or less since I can remember.

Q. Does his brother edit a Democratic paper?—A. Yes, sir; the Charlotte Leader.

Q. Now this man that was partially blind—Mr. Huber—was the one that rendered assistance to him?—A. Yes, sir.

Q. Did Mr. Huber mark his ballot?—A. I think he did.

Q. You saw him mark it if he did?—A. I couldn't remember whether there was one or two we had to help mark their ballots, and I think Mr. Huber helped them if anybody did. I didn't mark anybody's ballot.

Q. Did you see Mr. Clements's ballot marked?—A. Yes, sir.

Q. Who marked it?—A. I think Mr. Huber did.

Q. To recapitulate, you think there were two men who had their ballots actually marked by somebody else that day?—A. I don't think that more than two had somebody else mark their ballots.

Q. The balance were simply asking for instructions?—A. Yes, sir.

Q. And whenever there were any ballots marked you were present and saw them marked?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. When you counted those straight ballots after you opened your ballot box at 2 o'clock that afternoon you did count them aloud, did you, so anybody sitting around would know how many you counted?—A. No, sir.

Q. You didn't count them inaudibly, did you?—A. Yes, sir.

Q. How did you count them?—A. We first spread them into two piles. Republican and Democrat, and I counted one pile and Mr. Huber counted the other, and I told him how many there were—

Q. Out aloud?—A. So he could hear it; I don't know whether anyone else could or not, how many there were in my pile, and he marked that on the back of the roll.

Q. Did he tell you how many he counted in his pile?—A. Yes, sir.

Q. Out aloud?—A. Yes, sir.

Q. If Mr. Case was standing there within 3 or 4 or 5 or 6 feet of you he could have heard what you said to Mr. Huber about the number of straights

you counted and what Mr. Huber said to you about the number of straights he counted?—A. I presume he could; yes, sir.

Q. Mr. Case was right there watching the count?—A. I don't remember whether he was there at that time or not.

Q. Mr. Clements was there?—A. I don't remember of seeing Mr. Clements after we commenced counting the split ballots.

Q. Was there anybody else standing around there when you were talking to Mr. Huber and Mr. Huber to you about the number of straights each of you had counted? If so they could have heard if they passed by there, I suppose?—

A. Yes, sir.

Q. That is, voters?—A. Yes, sir.

Q. They were passing right by Mr. Huber, were they not, and yourself, then, near enough so if anybody had been passing when you told Mr. Huber how many straights there were they would have heard it?—A. I think so.

Q. When Mr. Huber told you how many straights there were he had counted, if anybody had been passing by they could have heard it. If their hearing was all right, couldn't they?—A. They might have; yes, sir.

Q. Counsel asked you something about whether you challenged any voter that day, and I understood you to say you did not—that you didn't see anything that occurred that you thought you had occasion to make a challenge—something to that effect—is that about the substance of it?—A. That is what I said; yes, sir.

Q. Did you know what the law was about requiring voters to take an oath if they wanted instruction or assistance?—A. No, sir; I did not.

Mr. FRANKHAUSER. I object to your continually using the words "assistance" and "instruction" interchangeably. We take the rule to be that a man does not have to be sworn to receive instruction, and I object to the question assuming that they must be sworn to receive instruction.

Q. Instruction or assistance, either or both; now I am going to read a little to you from what we claim to be the law of the State of Michigan that was in force on the 5th day of November, 1912, as follows:

"When an elector shall make oath that he can not read English or that because of physical disability he can not mark his ballot, or when such disability shall be made manifest to said inspectors, his ballot shall be marked for him in the presence of the challenger of each political party having a challenger at such voting place by an inspector designated by the board for that purpose, which marking shall be done in one of the booths."

If you had known that was the law on that election day, then as a challenger there for the Democratic Party, if anybody wanted assistance and it was not apparent that they were physically disabled and thereby prevented from marking their ballots, you would have challenged their vote, would you not?—A. Yes, sir.

Q. To refresh your recollection, did not Mr. Ellis say there about the time they undertook to open that ballot box at 2 o'clock this in substance: "Personally I have no objection to your doing that, but if you do it it is illegal," or that in substance?—A. I didn't hear any such words.

GORDON GRIFFIN, being first sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. You are supervisor of the township of Carmel?—A. Yes, sir.

Q. How long have you been supervisor?—A. Two years.

Q. Were you a member of the election board in 1912 on the 5th of November?—A. Yes, sir.

Q. After you got through counting the ballots that day, what was done, or that night?—A. Well, sir, I couldn't say what was done with them.

Q. Were you there when they were put away?—A. No, sir.

Q. Do you know where they are now?—A. I suppose I do anyway.

Q. Where are they?

Mr. ADAMS. I object to where he supposes they are.

Q. Where are they?

Mr. ADAMS. Same objection.

A. Carmel Township hall.

Q. Has the box been there ever since election day?—A. As far as I know it has.

Q. In whose care or charge is it?—A. It is locked up with the clerk.

Q. Is the box itself locked?—A. Yes, sir.

Q. As far as you know it contains the ballots that were deposited there the day of election?—A. Yes, sir.

Mr. FRANKHAUSER. I will make this offer on the record: The contestee here is willing that the box shall be brought in and the votes counted by the board to-morrow morning, and will abide by the result, whatever it shows, in response to any claim that has been made by the contestant that the ballots were not properly counted and that he did not receive the ballots that were cast for him.

Mr. ADAMS. I do not think that counsel understands the purport exactly and wholly of the contest that is made on this particular precinct. A count of the ballots could not in any way cure the invalidity or illegality of the election that was held in that township on that day, by a count of the ballots in the box.

Mr. FRANKHAUSER. Will you consent that that may be done?

Mr. ADAMS. What is the object of doing it?

Mr. FRANKHAUSER. If you will consent to that we will bring in the box.

Mr. ADAMS. I do not see what avail it would be to the congressional committee or anybody else to count the ballots.

Mr. FRANKHAUSER. I take it you do not consent to it.

Mr. ADAMS. You can do anything you want to; that is all I have to say upon the record in regard to the matter. We claim that the election as stated in the petition was illegal for the various irregularities that occurred, irrespective of what the vote may show. Any count of the ballots could in no way whatever relate to the objections that are made to the election in that precinct on the 5th day of November, 1912.

Mr. FRANKHAUSER. In response to that we make the offer and we do not care to have any further controversy.

Q. I suppose you were there all day the day of the election?—A. Yes, sir; except at the noon hour.

Q. What portion of the work did you do?—A. I took the tickets and deposited them in the box.

Q. Are you one that signed these blanks?—A. Yes, sir.

Q. The o'her members of the board were Mr. Huber?—A. Yes, sir.

Q. And Mr. Shaver?—A. Yes, sir.

Q. And the township clerk, Mr. Cole?—A. Yes, sir.

Q. And another clerk, Mr. Martin, and yourself?—A. Yes, sir.

Q. What did you discover with reference to the ballots going into that box toward noon, or about noon?—A. We discovered that they commenced to work in hard shortly after noon and it was hard to get them in, at half past 1 o'clock or a quarter to 2 o'clock, I think.

Q. What was the trouble, can you explain?—A. The box was full; that is, very nearly full.

Q. How did it work?—A. It worked hard, the ballots would not go down in there.

Q. Did you have trouble in getting the ballots in?—A. Yes, sir.

Q. How many ballot boxes did you have?—A. Two.

Q. What was the other one for?—A. For the woman suffrage.

Q. Did you put all the ballots for President, governor, etc., down to coroner, in one ballot box, the State ticket, the big ticket I mean?—A. Yes, sir; we did; we put them in the same box.

Q. You only had one box aside from the woman-suffrage box?—A. Yes, sir.

Q. About how large was that box?—A. It was 28 inches high.

Q. How high?—A. About 28 inches high.

Q. How deep down in that box did the roller go?—A. Half an inch or an inch.

Q. It was pretty nearly on the cover?—A. Yes, sir.

Q. That box was locked the same as any other box?—A. Yes, sir.

Q. Was there any opening to the box, except the slot where you put in the tickets, when locked?—A. No, sir.

Q. Do you know Mr. Spencer?—A. Yes, sir.

Q. Was he there that day?—A. Yes, sir.

Q. Do you know what his politics are?—A. Yes, sir.

Q. What are they?—A. He is a Democrat.

Q. Do you know whether he was working for any particular party or candidate?—A. No, sir.

Q. Was he living in the township that day?—A. No, sir.

Q. Where was his residence?—A. Charlotte.

Q. But he was there?—A. Yes, sir.

Q. What was he doing, if you know?—A. He was to the polling place there; I don't know what he was doing.

Q. Did you see him again there in the building, working in the game and see any banner on his automobile?—A. No, sir.

Q. He drove an automobile?—A. Yes, sir.

Q. And did at that time?—A. Yes, sir.

Q. Do you personally know of his working for any candidate or any ticket before the last fall election?—A. No, sir.

Q. What was he doing up there that day, if you know?

Mr. ADAMS. I object to that as incompetent, irrelevant and immaterial.

A. I don't know.

Q. What did you see him doing in the voting place that day?—A. I saw him doing nothing particular, sitting around there part of the time.

Q. Did he show any interest in the election?

Mr. ADAMS. I object to that as calling for the conclusion of the witness and not calling for anything that Spencer did.

A. About the same as usual; he always took an active part.

Q. Did he have anything to say; if so, what, that day?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and hearsay.

A. Well, all I can say, I think it was after dinner; we were talking about the ballot box being full and he said: "You will have to take the 2 o'clock count, won't you?" I says, "I don't know how that will be; I don't know whether it will be all right or not." He says, "We do it in cities." I said, "I understand that," and finally we concluded to take the 2 o'clock count.

Q. Why did you conclude to do that?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. Because the box was full.

Q. Who suggested this; that is, outside of what you stated about Mr. Spencer.

Mr. ADAMS. Objected to as incompetent, irrelevant, immaterial, and hearsay.

A. Really I couldn't say; the board was there and it was talked.

Q. Well, who?—A. Well, sir; I don't think I would want to state any names; I couldn't say, really.

Q. You talked it among yourselves?—A. Yes, sir; I will not say any names.

Q. What did you finally do then?—A. Well, we unlocked—in the first place we declared the polls closed until we could empty the ballot box, then we emptied the ballot box with the ballots on the table.

Q. How long were the polls closed?—A. Possibly two minutes.

Q. What did you do when you commenced voting again?—A. We declared the polls open.

Q. Was that publicly announced?—A. Yes, sir.

Q. State, as near as you can, what you said when you declared the polls closed?—A. "Hear ye, hear ye, these polls are closed on account of the ballot box being full and necessary to take the 2 o'clock count." I don't know as that are just the words; I don't think those are just the words.

Q. When you ordered that 2 o'clock count, did you suppose there was authority in law for so doing?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. I knew that was not the law.

Q. You knew it was not the law?—A. Yes, sir.

Q. Who unlocked the box?—A. I did.

Q. Who had the key?—A. I did.

Q. What did you do after you unlocked the box?—A. We emptied the ballots out on the table.

Q. What did you do then?—A. I put the box down on the floor.

Q. You locked the box again?—A. Yes, sir.

Q. And commenced voting?—A. Yes, sir.

Q. Now, what was done with the ballots you emptied on the table?—A. Mr. Huber and Cortez Cushing got to counting.

Q. Did you notice what ballots were first counted?—A. No, sir; I did not.

Q. What was done with reference to Mr. Cushing before he began the count with Mr. Huber?—A. He was sworn in.

Q. Who swore him?—A. William Huber.

Q. Is he a justice of the peace?—A. Yes, sir.

Q. Who else was sworn in about that time?—A. William Clements.

Q. Can you state on the record how those two gentlemen came to be the ones picked out?—A. Well, we talked it on the board and also talked with Mr. Ellis in regard to Mr. Cushing acting.

Mr. ADAMS. I object to what he talked with Mr. Ellis and move to strike it out as irrelevant and immaterial. He was not a member of the board there and had no authority to give legal advice, and his advice or suggestions are not binding and it is incompetent and I move to strike out the answer.

Q. What did Mr. Ellis say?

Mr. ADAMS. The same objection.

Q. About Mr. Cushing?

Mr. ADAMS. The same objection.

A. As far as he was concerned it was all right.

Q. What was all right?—A. For Mr. Cushing to act as clerk.

Q. Did you hear Mr. Ellis say anything about the count at that time?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and hearsay.

A. I asked Mr. Ellis if he thought it would be all right, and he said as far as he was concerned it would be.

Q. Did he say anything more?

Mr. ADAMS. The same objection as last.

A. That is all I remember.

Q. Do I understand he suggested Mr. Cushing?—A. No, sir; I asked him myself.

Q. What did you ask him?—A. I asked him if it would be all right to put Mr. Cushing in as clerk, and he said it was—inspector.

Mr. ADAMS. I move to strike out the answer as hearsay and incompetent and immaterial.

Q. What was he sworn in as?

Mr. ADAMS. I object to it as incompetent, calling for the conclusion of the witness, and that there is better evidence.

A. As inspector.

Q. What was Mr. Clements sworn in as?

Mr. ADAMS. The same objection.

A. As an inspector.

Q. Who, if anybody, if you remember, suggested Mr. Clements as one of the men?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and hearsay.

A. I don't remember who it was.

Q. These men were chosen by whom?—A. By the board.

Q. Was Mr. Case around there that day?—A. Yes, sir.

Q. What was he doing, if you know?—A. Well, really, I don't know.

Q. Where was he, inside or outside of the railing?—A. He was outside until we commenced to count the votes.

Q. Then where did he go?—A. He was inside part of the time, anyway.

Q. What did he say when inside?—A. He looked over the ballots.

Q. In counting those ballots, how far were they counted—how far, as you observed as to the manner of counting?—A. I didn't pay very much attention to the count myself; I was busy most of the time.

Q. Who did the reading of the ballots?—A. William Huber.

Q. Who did the tallying?—A. Cortez Cushing, and William Clements helped.

Q. After him who tallied?—A. D. C. Cole.

Q. Was he the township clerk?—A. Yes, sir.

Q. Did Mr. Cushing continue to tally until the election was over with?—A. Yes, sir.

Mr. ADAMS. I object to that as leading.

Q. Did you see Mr. Case doing anything besides what you have testified to—looking on there?—A. No, sir.

Q. Did they complete this count—when 5 o'clock came what did you do?—A. We declared the polls closed.

Q. Was the count completed then that they had began?—A. No, sir.

Q. State whether any information got out, as far as you know, among the lobby or board as to how that count stood?—A. It did not.

Q. Did you hear any statement of how the vote stood on Congressmen?—A. No, sir.

Q. Well, I think that something was said about a man voting who required or, at least, asked for assistance. Give your recollection on that—how many

there were, as much as you can remember.—A. Well, I would say two; that is as many as I would want to say.

Q. Do you remember who they were?—A. Yes, sir.

Q. Who were they?—A. One was George Dibble and one was Sam Clements.

Q. Did they come in separately?—A. Yes, sir.

Q. What was said by the first one—what was his trouble?—A. Really, I couldn't say as to that.

Q. What did he say?—A. He asked for assistance.

Q. Asked who?—A. I think Mr. Shaver and Mr. Cushing.

Q. Where was he when he asked for assistance?—A. To the gate—that is, about to pass through the gate.

Q. What did the board do when he made that request?—A. Mr. Shaver—Mr. Cushing was there and called him and he went in the booth with him.

Q. Do you know what occurred in there?—A. No, sir.

Q. Was that in the forenoon or afternoon?—A. I couldn't say.

Q. Was it after Mr. Cushing was counting?—A. I think it must have been before noon, but I will not say.

Q. Well, if he asked for assistance, Mr. Shaver, one of the board, and Mr. Cushing went in the booth with him?—A. Yes, sir.

Q. You don't know what occurred in there?—A. No, sir.

Q. Did you go in the booth?—A. No, sir.

Q. You don't know whether they marked the ballot or not?—A. No, sir.

Q. What was the next man, Clements, what was the trouble, an old man?—A. Yes, sir.

Q. About how old?—A. I think about 70 years old.

Q. What did he say?—A. He asked for assistance.

Q. Did he give any reason?—A. He was partially blind.

Q. Who assisted him?—A. Mr. Shaver and Mr. Cushing.

Q. Was there anything about his appearance that you could see he was blind or partially blind?—A. One eye.

Q. What could you see about it—what did you see that indicated he was partially blind?—A. I knew he was partially blind.

Q. Did he have on any glasses?—A. I have known him all my life.

Q. What was done with him and who did it?—A. Mr. Cushing and Mr. Shaver went in with him; I will not say Mr. Shaver; I think that was Mr. Huber.

Q. What did they do?—A. I couldn't tell you what they did; they went in the booth with him.

Q. Did both of those men hand their tickets to you yourself?—A. Yes, sir.

Q. Were there any others who had assistance in the booths that you know of that day besides the two you have spoken of?—A. No, sir.

Q. Do you think there were any others?—A. There might have been; those are the only two I remember.

Q. In your judgment, how many more might there have been?—A. There might have been two more.

Q. That would be four in all.—A. Yes, sir.

Q. Do you think there could have been any more than four?—A. I will not say there could have been more than four.

Q. Your best judgment?—A. I wouldn't think more than four.

Q. You don't remember anything as to who the other two were; you have named two?—A. No, sir; I do not.

Q. Was there anybody who had a ticket marked when Mr. Cushing was not called in to see it marked?—A. No, sir.

Q. Mr. Cushing was always invited?—A. Yes, sir.

Q. Who asked him to go in?—A. I couldn't hardly say; I think Mr. Shaver.

Q. Well, now, then, when it came 5 o'clock you adjourned and continued the count; did you stay there until the count was all done?—A. Yes, sir.

Q. And the returns all signed up?—A. Yes, sir.

Q. Did you know anything about the sealing of them?—A. No, sir.

Q. You went away before that?—A. Yes, sir.

Q. Who was left there to seal them?—A. Mr. Huber and Mr. Shaver.

Mr. ADAMS. I object to who was left there to seal them.

Mr. FRANKHAUSER. I will withdraw the question.

Q. Were these statement books and poll books spoken of here, were they all completed when you left and signed up and filled in?—A. Yes, sir.

Q. About what time was that?—A. That was about 11 o'clock.

Q. About what time did you get through counting?—A. About half past 10 o'clock.

Q. This man Ells is a Democrat, you understand?—A. Yes, sir.

Q. And was a candidate for county office on that ticket?—A. Yes, sir.

Q. State whether or not he is an active participant in Democratic politics?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

Q. Whether he is or not?—A. Yes, sir; he is.

Q. He has been holding what offices in that township?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. He has been township clerk and supervisor and I think he has been treasurer.

Q. For how many years?

Mr. ADAMS. The same objection.

A. He has been township clerk, maybe, 15 years.

Q. Did you ever see him upon the board?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. Was a member, as far as you know, for a number of years?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. The Mr. Ells you have been asked about was Julius B. Ells?—A. Yes, sir.

Q. He was there about 11 o'clock election day, when the votes were counted, when you left?—A. The whole board was there.

Q. All the others were there?—A. Except Mr. Clements; he went home about 5 o'clock.

Q. Mr. Clements was not there at 11 o'clock when you left; he didn't come back after he left, about 5 o'clock, that day?—A. No, sir; he left about 6 o'clock.

Q. After he left, somewhere about 5 or 6 o'clock, he didn't return again any time that you remember?—A. No, sir.

Q. And the books were made out, you say, when you left?—A. Yes, sir.

Q. All of them were signed when you left?—A. Yes, sir; as far as I know they were all signed; I know I signed.

Q. I understood you to say they were all signed?—A. I think they were all signed.

Q. Do you mean to say upon the record they were all signed when you just suppose they were?—A. I am pretty sure they were all signed.

Q. Signed by all the members of the board?—A. Yes, sir.

Q. When you left?—A. Yes, sir.

Q. Now, I show you Exhibit 27, a certificate on Exhibit 27, which is the poll book; that was not entirely signed, was it, when you left?—A. William Huber's name isn't there.

Q. He didn't sign it when you left?—A. No, sir.

Q. It is not signed even now?—A. No, sir.

Q. That was not completed when you left at 11 o'clock?—A. No, sir.

Q. And it has not been completed yet?—A. No, sir.

Q. When you left the other members of the board hadn't signed Exhibit 27, had they?—A. Yes, sir.

Q. That is, Mr. Huber hadn't signed that Exhibit 27 at all, you just stated: he was the other inspector, wasn't he?—A. Yes, sir.

Q. Now, Mr. Cole was the township clerk?—A. Yes, sir.

Q. He was the township clerk, D. C. Cole?—A. Yes, sir.

Q. He was the clerk of that election?—A. Yes, sir.

Q. He was a member of the board of election wasn't he?—A. Yes, sir.

Q. When you left there that night D. C. Cole hadn't signed that poll book, which is a part of your election returns, Exhibit 27, had he?—A. He was not one of the inspectors.

Q. He was a member of that election board?—A. Yes, sir.

Q. He was the clerk of that election board anyway, and D. C. Cole's name was not on that certificate to Exhibit 27, the poll book, when you left there that night, was it?—A. His name is not there.

Q. It is not on there even now, as you are looking at it you don't find it there to that certificate under your name and Mr. Cushing's and Mr. Shaver's name?—A. I didn't know as he had to have it.

Q. It is not there?—A. No, sir.

Q. That was not there when you left that night?—A. No, sir.

Q. When Mr. Cushing was selected by—or was brought in there rather—to count those ballots your full election board you had there that day was then and there present?—A. Yes, sir.

Q. The two justices of the peace. Mr. Shaver and Mr. Huber, yourself as supervisor, and the township clerk were all there at 2 o'clock when that count was commenced?—A. Yes, sir.

Q. Now, you know, didn't you, how the election board—what the statute designated at the election board?—A. Yes, sir.

Q. You knew that the law on the 5th day of November required that the supervisor, two justices of the peace not holding the office of supervisor or township clerk, whose term of office will first expire, and the township clerk of each township, and the assessor, if there be one, an alderman of each ward in a city shall be the inspectors of election?—A. Yes, sir.

Q. Knowing that then to be the law your election board on the 5th day of November proceeded to appoint two other inspectors of election?—A. Yes, sir.

Q. Namely, Mr. Cushing and William Clements?—A. Yes, sir.

Q. You also knew this to be the law, did you, on the 5th day of November, 1912: "In case four inspectors shall not attend at the opening of the polls, or shall not remain in attendance during the election, the electors present may choose viva voce such number of said electors as, with the inspector or inspectors present, shall constitute a board of four in number; and electors so chosen shall be inspectors of that election during the continuance thereof." Now, did you know that was the law?—A. Yes, sir.

Q. Yet knowing that was the law on the 5th day of November, 1912, you swore in there two other inspectors, Mr. Cushing and William Clements, as inspectors of that election, and those two men participated in the conduct of that election; that is true, is it not?—A. Yes, sir.

Q. The voters there did not elect, nominate, or appoint either Mr. Cushing or Mr. Clements, did they?—A. No, sir.

Q. The voters present had no voice in the selection of Mr. Cushing or Mr. Clements as inspectors of that election, did they?—A. Yes, sir.

Q. They had no voice in it?—A. No, sir; they had no voice.

(Last question read.)

A. Well, no; I talked with Mr. Ells——

Q. It was not a public matter?—A. No, sir.

Q. After the talk you had with Mr. Ells your board went ahead and selected those two men and they were sworn in, Mr. Cushing and Mr. Clements, as inspectors of that election?—A. Yes, sir.

Q. It was done absolutely by the board?—A. Yes, sir.

Q. Then when you did this—when you called in Mr. Cushing and Mr. Clements and they were sworn in there to act as inspectors of that election, you knew the law, as you have stated you did, and you knew then your board was acting illegally in selecting those two men to act on that board?

Mr. FRANKHAUSER. I object to that; I don't think the witness should be asked to pass upon questions that are for the Supreme Court.

(Last question read.)

A. It was a case of emergency.

Q. You knew that the only men who could be on that board was the supervisor, two justices of the peace, and township clerk, and you knew they constituted the board of inspectors, didn't you?—A. Yes, sir.

Q. You knew then when you selected Mr. Cushing and Mr. Clements as additional inspectors on that board when all the other inspectors on that board were present there, that your board was acting illegally in doing that?—

A. No, we didn't think we were; we were doing the best we could.

Q. You knew you were doing something you had no authority to do under the law, didn't you?

Mr. FRANKHAUSER. I object to that as incompetent and immaterial.

A. We didn't think it was any harm.

Q. I didn't ask you whether any harm, I say you knew that it was illegal when you put Mr. Cushing on there and Mr. Clements as inspectors, didn't you, as you understood the law?—A. Why, I read that law over, I don't know that I thought of it at the time.

Q. As you understand the law when you did put those two men on there as inspectors, you knew when you did that, that it was in violation of the law, as you then understood the law to be; that is true, isn't it?—A. Well, I don't know that I thought anything about it at the time.

Q. You were supervisor of Carmel Township and chairman of that election board, made so by the laws of the State of Michigan?—A. Yes, sir.

Q. And you knew who the statute said should be the board of inspectors of that election, and you knew that when you went on that board that morning, didn't you?—A. Yes, sir.

Q. And you knew that all the members of the board were there when Mr. Cushing and Mr. Clements were made inspectors or were attempted to be made inspectors, didn't you?—A. Yes, sir.

Q. So then, knowing what the law was, you believing the law to be as you now say it was at that time, you knew then that in putting those two men on there you were doing something that was not in accordance with legal provisions under the statutes of this State, didn't you?—A. It was a case of emergency.

Q. When you did that you knew then from your own understanding of the law that you had no right to put those two men in there?—A. No, sir; I did not.

Q. You say you didn't know?—A. No, sir; possibly we didn't have the right to according to law if you put it that way.

Q. You knew you didn't have any right to according to law, didn't you?—A. I read that law.

Q. Before you had put them on that day you had read the law?—A. Yes, sir.

Q. You knew who were to be the members of that board of inspectors, didn't you?—A. Yes, sir.

Q. So when you put two other men on there to be members of that board of inspectors, you knew when you did it that you didn't have any legal authority to do it?—A. I don't know as I thought anything about it at that time.

Q. You knew it?—A. Yes, sir; I knew it.

Q. That ballot box that was opened there at 2 o'clock that afternoon, did you unlock the box?—A. Yes, sir.

Q. You had the key?—A. Yes, sir.

Q. When you went away from there that night what did you do with the key to the ballot box?—A. I gave it to William Huber.

Q. You never got it back?—A. Yes, sir.

Q. When?—A. That night.

Q. What time?—A. Well, before 12 o'clock.

Q. What did you do with it then?—A. I put it in my pocket.

Q. How long did you keep it from the time Mr. Huber gave it back to you?—A. Until our next meeting.

Q. You didn't go back to the voting place after you left there?—A. I didn't go in. I went back there, but didn't go in the voting place.

Q. They were there when you went back?—A. Yes, sir.

Q. So you were not there when the books were finally disposed of that day or night—the election books?—A. No, sir.

Q. Where were those election books when you left—the statement books and the poll books and the tally sheet books you had used on the election that day?—A. They were on the table.

Q. When you left, what remained to be done?—A. Just sealing the box and sealing the envelopes and destroying the remaining ballots.

Q. That you didn't use?—A. No, sir.

Q. Now, you didn't help count those ballots that were counted from 2 o'clock until 5 in the afternoon of that day?—A. No, sir.

Q. Did you assist in counting after the polls closed at 5 o'clock? What did you do?—A. I counted the woman suffrage votes.

Q. You didn't count any of the ballots then that were there to be counted, that were voted that day for any of the candidates for office?—A. No, sir.

Q. So that you signed this statement, then, without knowing whether the vote was correctly stated in these returns or not, without any personal knowledge?—A. They were competent men.

Q. No; wait a minute. We will not comment upon the facts at all; I want to find out what you did. You signed the certificate to the statement book, Exhibit 28, a certificate that the statements in that statement book of the votes cast for the different candidates there for office at that election there that day were correct, when, as a matter of fact, you had not counted the ballots at all, had you?—A. No, sir; I didn't count them.

Q. You didn't have anything to do with the counting of the ballots?—A. No, sir.

Q. You didn't know of your own knowledge, then, when you signed that certificate to that exhibit I have just called your attention to, whether that exhibit correctly showed the votes cast for the respective candidates or not, of your own personal knowledge?—A. No, sir.

Q. That is, you signed it without knowing personally whether the statements in there were correct or not from any count you had made of the ballots that day?—A. Not from any count I made. I knew they were all right.

Q. You knew they were all right by assuming something that somebody else had done?—A. I was there all the while.

Q. But you didn't count the ballots?—A. No, sir.

Q. How in the world can you tell whether those figures were correct without looking over those ballots yourself, except as you took somebody else's say so. That is the way you knew?—A. Yes, sir.

Mr. FELLOWS. I object to any further examination along this line; it is apparent that the contest upon the other side is that each man sitting on this board must personally inspect each ballot, then must personally put down the result of that ballot. If one should do that, it would take, in an ordinary precinct, too much time, and the law does not aim at such impractical things, and a contest for Congress based upon such flyspecks as that is beneath the dignity of either of the parties.

Q. You took the word of somebody else on that board?—A. I knew them.

Q. You knew the men on the board?—A. Yes, sir.

Q. But you don't know whether those figures are correct, of your own knowledge or not, do you?—A. I didn't put them down.

Q. You didn't count any of them?—A. No, sir.

Q. So you don't know whether they are correct or not, of your own knowledge, from any investigation you made of the ballots yourself that day?—A. I didn't set them down.

Q. You said you declared the polls closed until you could empty the ballot box; that was the declaration you made?—A. Yes, sir.

Q. You didn't make any declaration when you started in again, did you?—A. Yes, sir.

Q. What declaration did you make?—A. Declared the polls open.

Q. This election was held in the township hall?—A. Yes, sir.

Q. Did you have any ballot boxes—did the township have any—besides those you were using that day?—A. No, sir.

Q. Did you have on November 5, 1912, as the property of the township of Carmel two ballot boxes?—A. I think there was another small box.

Q. Did you have that there in the voting place that day?—A. Yes, sir.

Q. Why didn't you use it?—A. It was a very small box.

Q. You only had about 60 more votes; it would hold 60 votes, would it not?—A. We had more than that.

Q. You had about three-fourths of the total vote cast in the ballot box when you opened that box about 2 o'clock, didn't you?—A. I think 140.

Q. One hundred and forty what—140 votes cast at that time?—A. I am not positive about that.

Q. If you had 140 votes cast at that time when you opened that ballot box, you had 140 votes cast?—A. I think so.

Q. That left 99. How big was this extra ballot box you had there?—A. It was 6 inches wide and 10 or 12 inches long.

Q. You didn't try to use that at all, did you?—A. No, sir.

Q. You could have filled it up, could you not, with ballots?—A. I suppose we could.

Q. Of course, you didn't know when you opened that ballot box at 2 o'clock how many more votes were going to be cast?—A. No, sir.

Q. And yet you made no effort to use that other ballot box you had there that day?—A. No, sir.

Q. It had not been used up to that time for any purpose in carrying on the election, had it?—A. No, sir.

Redirect examination by Mr. FRANKHAUSER:

Q. I will ask you whether that was an honest election, and a fair and square one, as far as you know?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and calling for the conclusion of the witness.

A. Yes, sir.

Q. Did you see anything there that day that indicated that anybody wanted to deprive Mr. Carney of a single vote that belonged to him?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. No, sir.

Q. Did he, in your opinion, get every vote that was cast for him?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. Yes, sir.

Q. Did John M. C. Smith get any votes, in your opinion, that did not belong to him?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

A. No, sir.

Q. Was there any electioneering around that booth or that voting place against Mr. Carney, or in favor of John M. C. Smith?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness and no facts.

A. I don't remember of any.

Q. And at the time that you ordered that count or acquiesced in taking that count in the afternoon, was that an honest conclusion you came to, to facilitate business?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. Did you have the least idea of hurting anybody by making that kind of a move in the election?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. No, sir.

Q. In your opinion, was anybody injured by that count in the afternoon?

Mr. ADAMS. Objected to as incompetent, irrelevant and immaterial, and calling for a conclusion.

A. No, sir.

Q. As far as you know that ballot box is in the same condition it was in the night of the election?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. As far as you know, you say, that the ballot box is in the same condition it was the night of the election?—A. Yes, sir.

Q. Have you had that ballot box since?—A. No, sir.

Q. I understood you to say a while ago that the ballot box was used since the general election, was it?—A. No, sir.

Q. When did you see that ballot box last?—A. The day of the primary.

Q. Did you see it that day?—A. No, sir.

Q. What one did you use?—A. We got a box especially for that election.

Q. You didn't have any ballot box then?—A. Yes, sir.

Q. Where did you see this ballot box that the general ballots were put in when the voter handed them in for deposit on November 5, 1912, where did you see it next after the election of November 5, the first time you saw it after that?—A. Up here on that day, I think that was the first time.

Q. On the day of the primary election?—A. Yes, sir.

Q. That was when?—A. I don't remember that date now.

Q. On March the 5th.—A. Yes, sir.

Q. Where was it at that time?—A. In the hall.

Q. Just in the same condition it was when you saw it, the night you left there?—A. No, sir.

Q. It was not in the same condition?—A. No, sir.

Q. Well, from the time you left the voting place there at the town hall at about 11 o'clock on the night of November 5, 1912, some change had occurred in that ballot box up to the time you saw it at the time of the primary election recently?—A. Yes, sir.

By Mr. FRANKHAUSER:

Q. What was the change?—A. There was a seal on it.

Q. Was that the only change?—A. Yes, sir; and locked.

By Mr. ADAMS:

Q. You don't know what is in it?—A. No, sir.

Q. Did you see it locked up at the voting place on the 5th, before you left, so you don't know what was in it?—A. No, sir.

Q. So you haven't looked in it since to find out what was in it?—A. No, sir.

Q. So you don't know now what was in it?—A. No, sir.

WILLIAM L. HUBER, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Huber, where do you reside?—A. In Carmel Township.

Q. Did you hold any official position there?—A. I am justice of the peace.

Q. Were you a member of that election board in that township on the 5th day of November, 1912?—A. Yes, sir.

Q. Did you serve all day?—A. I did.

Q. Did an emergency arise along about 2 o'clock of that day?

Mr. ADAMS. I object to that as assuming something and leading and calling for the conclusion of the witness and as incompetent, irrelevant, and immaterial.

A. I know the ballot box was being filled.

Q. What kind of a ballot box did you use?—A. A metal box 12 inches in diameter and 28 inches long.

Q. How were the ballots put in the box?—A. There was a slot on top and two rollers that worked opposite each other and a crank to roll them in the box.

Q. Was it so constructed that you could slip a ruler or anything of that kind in the slot to jam the ballots down?—A. It was not.

Q. Along about 2 o'clock the box became full?—A. Yes, sir.

Q. So it would not work?

Mr. ADAMS. I object to the question put by the attorney general and the one before it as leading, and I take an exception to this mode of examination.

Q. When that occurred what was done, was there any discussion before anything was done?

Mr. ADAMS. I object to that as leading.

A. The board had talked the matter over at noon and considering the size of the ballots and the size of the box, the box would become full before night. We had two small boxes about 6 by 6 by 12 inches, I think, inside measurement, one was for the woman suffrage ballot and the other was empty.

Q. What was there in that one that was empty, was it large enough to take care of the rest of the election that day?—A. It was not; it had a partition across in the center and it left about 6 inches at each end to put in small ballots. It wasn't anything more than for the amendments to the constitution.

Q. Now you say you discussed that at noon?—A. Yes, sir.

Q. Among the members of the board, you mean?—A. Yes, sir.

Q. Did you discuss it with anybody besides the board?—A. We talked the matter over with those present—

Mr. ADAMS. I object to what he discussed with anybody besides the members of the board as incompetent, irrelevant, and immaterial.

A. There were a number present, among them Mr. Spencer.

Q. Who was he?—A. An auctioneer.

Q. Was he quite active at that campaign?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

A. I couldn't say how active he was on that day; he was a Democrat.

Q. Where did he live?—A. He lived in Charlotte.

Q. Did he have any business other than politics out there that day?—A. Not that I know of.

Q. Did you discuss it with him?—A. We talked the matter over and said we were up against a proposition.

Q. Did you discuss it with anybody besides Mr. Spencer?—A. With Mr. Ellis, the chairman of the Democratic county ticket.

Q. Was he also a candidate on the Democratic ticket?—A. Yes, sir.

Q. What did he say about it?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and hearsay.

A. He said as far as he was concerned he couldn't see any other way out of the difficulty.

Q. Was this discussion had by you for the purpose of finding some means to get along with the emergency you had?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and hearsay.

A. It was

Q. What did you finally determine upon?—A. We concluded the best way was to call in several extra clerks and proceed with the count, so I swore in William Clements and Cortez Cushing as extra clerks.

Q. What was their politics?—A. One was a Democrat and the other was a Republican.

Q. They were men of standing in that community?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. I always had great respect for their integrity.

Q. You had at that time no doubt but what they would honestly act in the position they were called upon to act?—A. I had not.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

Q. After they were sworn in what was done?—A. We proceeded with the emptying of the ballot box on several tables. Mr. Cushing proceeded with the sorting of the ballots, placing the straight Democratic in one pile and the straight Republicans in another and the splits in a third pile. We proceeded to count the Republican straights and rolled them in a roll and put the number on the back and laid it up on a shelf and the same with the Democratic votes. Then I swore in Mr. Clements and we proceeded with the count.

Q. Of the splits?—A. Yes, sir.

Q. Who did the reading?—A. I did.

Q. Did you correctly read the ballots you read?—A. I did.

Q. And gave to each man that had a vote thereon the vote in the tally?—A. I did.

Q. Had you finally completed that count when the time came to close the polls?—A. We had not.

Q. How nearly had you completed it?—A. There were probably 8 or 10 and maybe a dozen ballots left yet.

Q. After the ballots were closed did you complete the split tickets on hand that were cast after 2 o'clock?—A. Yes, sir.

Q. Then what did you do?—A. In the interval we completed the 2 o'clock count and the rest of the board had sorted the ballots cast from 2 o'clock on and they passed the split votes to me and I kept on reading.

Q. Did you honestly read those ballots?—A. I did.

Q. What time did you finally complete the count?—A. I think about 10.30.

Q. Now, did Mr. Cushing remain as one of the clerks?—A. He did; yes, sir.

Q. Was there anyone else on that board that read to the checks any of the ballots cast except yourself?—A. No, sir; there was not.

Q. Every one that you did read, was it honestly read?—A. Yes, sir; I think so.

Q. Now, after the count was completed, what did you do with the returns?—A. After the count was completed?

Q. Yes, sir; did you proceed to make out your returns?—A. Yes, sir; we compared the two tally books to see they were right, and I made the announcement of the result of the election to those present. I don't know who was present outside, because the lobby of the room was dark.

Q. What did you do with the ballots that were voted?—A. After we found that everything was correct and agreed with the poll book, we placed them back in the ballot box and sealed them—I sealed them in the box and locked the box myself.

Q. Are they there now; as far as you know?—A. As far as I know, they are.

Q. Possibly that is not clear. When you counted up the straight ballots, were those put on the list at first or did you simply mark on the roll?—A. We marked on the roll; they were not put on until after the split votes were counted on the tally book.

Q. They were rolled up and you marked what there?—A. Just on the back of the roll.

Q. When you were all through you added those to the splits?—A. Yes, sir.

Q. During the afternoon when you were counting the ballots that you commenced to count about 2 o'clock, so far as you know was there any intelligence got out as to the state of the count?—A. I heard of none.

Q. Was there anyone assisting there in the preparation of the ballots there that day?—A. There was.

Q. How many?—A. I think three.

Q. By assisting I mean to help them mark their ballots; is that what you mean?—A. No, sir; by assistance, I interpret that as being shown where to mark the ballot.

Q. How many did you actually mark their ballots for, or how many actually had their ballots marked there that afternoon?—A. None that I know of.

Q. This assistance was simply instructing them to mark their ballots?—A. Yes sir; the construction of our booths was such that we had a very poor light. We had two electors there that could not see and they called Mr. Cushing and myself in to assist them so they might get in the right column. The third elector was Samuel Clements; he was partially blind and couldn't see the ballot at all, but he says, "You take hold of my hand and show me where to direct this mark on the ballot."

Q. And you did so?—A. I ascertained what ballot he wished to vote and he says "a straight Republican ballot." I says to him, "then mark there"; and he put it in the right place.

Q. Were any of the other of those men instructed where to place it?—A. No, sir.

Q. Was the election and the counting of the ballots honestly conducted, for anything you saw?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir; it was.

Q. Was there any electioneering there at the polling place for John M. C. Smith or anybody else?—A. I heard of none.

Q. Was there any challenging of votes?—A. None.

Cross-examination by Mr. ADAMS:

Q. There was nothing to prevent you from putting down the straight votes on the tally-sheet book as soon as you determined the number of straight votes, was there?—A. No, sir.

Q. As a matter of fact, there is a column on the tally-sheet book Exhibit 17, isn't there, opposite the name of John M. C. Smith, "Representative in Congress, total straight votes"?—A. Yes, sir.

Q. Likewise opposite the name of Claude S. Carney, Democratic candidate for Representative, on the same exhibit there is a column "Total straight votes" opposite his name?—A. Yes, sir.

Q. Why didn't you put those down when you had them counted?—A. We didn't know how many there were.

Q. You hadn't counted all the ballots because you were not through; the polls hadn't been closed?—A. The polls hadn't been closed.

Q. You put them down—put the counts you made—the result of the count—in lead pencil on the back of the straight ballots, did you?—A. Yes, sir.

Q. How many straights did you have up to that time?—A. I couldn't tell you.

Q. Don't you remember that?—A. No, sir.

Q. Don't you remember how many straights you had for John M. C. Smith that you took out of that ballot box that you opened at 2 o'clock?—A. No, sir.

Q. Have you any recollection of approximately how many or how many straight ballots you had in the ballot box you opened at 2 o'clock on that day in behalf of Mr. Carney?—A. No, sir.

Q. How many for him?—A. No, sir.

Q. In that count?—A. No, sir.

Q. You can't remember that?—A. No, sir.

Q. None of those electors who applied for instructions had their ballots marked that day, as far as you know?—A. None of them had them marked.

Q. Yes, sir.—A. I don't entirely get your meaning.

Q. None of them had assistance in marking them except the one you have mentioned?—A. That is all.

Q. Did you go in the booth with every man who asked for assistance that day?—A. I think I did.

Q. Mr. Shaver didn't go in with any of them?—A. I think not, he was busy on his side of the room.

Q. You are sure that Mr. Shaver did not go in with any of them?—A. I wouldn't swear to it.

Q. Mr. Griffin didn't go in with any of them?—A. I wouldn't swear to that.

Q. You say you went in with all who applied for aid?—A. Yes, sir; I think I did.

Q. On that day?—A. Yes, sir.

Q. None of those who applied for aid were sworn?—A. No, sir.

Q. This ballot box, you say—this extra ballot box—you say you had there, had a little partition in it?—A. Yes, sir.

Q. Of course, in the emergency that arose there that day I suppose you could have taken that partition out of that box, could you not?—A. It was glued fast.

Q. Couldn't you have taken it out?—A. No, sir.

Q. There was no way you could get the board that was glued on the inside of the ballot box out, no saws or anything there that you could take that out with?—A. No, sir.

Q. You couldn't send out and get a saw?—A. We possibly might.

Q. You could have taken a hammer and have knocked it out?—A. Possibly; we had none of those things there.

Q. You would not have to go very far to get them?—A. No, sir.

Q. You could have put ballots in there anyway without the partition being taken out?—A. No, sir.

Q. Why not?—A. The slot was not big enough.

Q. How big was the slot?—A. Probably a quarter of an inch in width and 3 inches long.

Q. Do you mean to say that a slot that was a quarter of an inch thick and 3 inches long that a ballot that had on the candidates for the respective offices could not have been put through that on the 5th day of November, 1912; do you?—A. I do.

Q. Why?—A. It was too small.

Q. Why was it too small?—A. The ballot was too large and too thick.

Q. How thick was the ballot?—A. It was very heavy paper.

Q. How thick was the ballot?—A. I have no way of knowing.

Q. Was it thicker than the whole width of the hole?—A. No, sir; not a single thickness.

Q. It could not have been as thick as the hole was wide?—A. That depended if doubled more than once.

Q. As it was voted as handed to the board of election to deposit in the ballot box, it was not so thick but what it could have easily gone into that hole as far as the thickness was concerned?—A. I think not.

Q. You could have doubled it at least once, and it would still have gone through that hole?—A. No, sir.

Q. As far as thickness was concerned?—A. Yes, sir.

Q. As far as thickness was concerned this ballot that you had there that day—a single thickness, you say—what do you mean?—A. One thickness of the paper.

Q. Well, it was not very thick paper.—A. Pretty heavy paper; yes, sir.

Q. It was not as heavy as that sheet of paper I show you now?—A. Yes, sir; many times heavier.

(Paper shown witness was marked "Exhibit 58.")

Q. The ballot on which the names of candidates for Representative in Congress were printed on November 5, 1912, on the ballots that were used there in that precinct on that day, when they were not folded at all, were many times thicker, you say, than Exhibit 58 that I now show you, was it?—A. Yes, sir.

Q. How many times thicker was the ballot you had there on which the different candidates for Representative in Congress were printed, which you used that day, was that ballot when unfolded at all than this Exhibit 58 which you are now shown?—A. I think three times as thick.

Q. When the ballot that was used there on that day on which the names of the different candidates for Representative in Congress were printed, how was that ballot presented to the board for deposit in the ballot box; how was it folded, if folded at all?—A. It was folded so the initials came on the outside.

Q. Now, how long and how wide was the ballot as folded, the one handed to you gentlemen to be put in the polling place?—A. It was about 3 inches in width and possibly about 6 inches long, about that.

Q. Three inches in width and 6 inches in length; about how thick?—A. I couldn't say.

Q. The ballot was, as a matter of fact, in a folded condition when handed to the voter before he marked it?—A. No, sir.

Q. It was not?—A. No, sir.

Q. Did your board leave the ballot entirely unfolded and handed to the voter in that way?—A. Yes, sir.

Q. When the ballot was folded in the presence of the voters there by the officers of the election, after they had been marked by the voter, how big was the ballot in a folded state?—A. I couldn't say.

Q. It was not half an inch thick, was it?—A. Some of them were, I think, the way they were folded.

Q. There were none of them a quarter of an inch thick, was there?—A. Yes, sir; one particular ballot, I remember.

Q. How many thicknesses of the ballots that you had there that day, would it have to be folded to make one-half an inch?—A. I couldn't say.

Q. Do you know how many thicknesses folded would make a quarter of an inch?—A. I do not.

Q. What thickness of paper was these ballots printed on that you used there?—A. I don't know.

Mr. ADAMS. We offer Exhibit 58 in evidence.

Q. You put the books in the ballot box that night, did you?—A. I did not.

Q. You saw them put in?—A. They were not put in there.

Q. None of them were put in?—A. I think just one.

Q. Which one was put in?—A. The poll book.

Q. All the ballots going into that box that you opened at 2 o'clock were the ballots on which the candidates' names were?—A. Yes, sir.

Q. So that the ballots for Representative in Congress and the other candidates for office there that day were put in the ballot box you opened at 2 o'clock that afternoon?—A. Yes, sir.

Q. I suppose you put in some other ballots, too, didn't you, that were not voted at that election—blanks?—A. No, sir.

Q. In addition to the ballots you put in the ballot box?—A. Yes, sir.

Q. In the same ballot box you had opened at 2 o'clock?—A. Yes, sir.

Q. Did you put the tally book in?—A. I don't think so; one book only, if I remember right.

Q. You are sure no tally book was put in?—A. I am quite sure.

Q. Did you send the different returns of your board to the county seat?—A. I did not; no, sir.

Q. Did you see them sealed up?—A. They were not sealed.

Q. They were not sealed when you left there that night?—A. No, sir.

Q. In whose possession were they left?—A. In the township clerk's office.

Q. That was D. C. Cole?—A. Yes, sir.

Q. That was the last then you saw of those election figures you filled out on that day?—A. Yes, sir.

Q. When you went away from there that night?—A. Yes, sir.

Q. You didn't see them at any time before they were sent down here to Charlotte?—A. Not after that night.

Redirect examination by Mr. FELLOWS:

Q. Did your board honestly get along with that emergency that arose there to the best of your ability?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. We did.

Q. If that little ballot box had been the practical solution of the problem there would you have used it?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

A. We would.

Q. The reason you didn't use it was because it was not practical?

Mr. ADAMS. Objected to as incompetent, irrelevant, immaterial, and leading.

A. We had discussed that small box and the board decided it was of no account to us.

Recross-examination by Mr. ADAMS:

Q. You didn't try to deposit any ballots in the little box, did you?—A. It was not large enough.

Mr. ADAMS. I move to strike out the answer as not responsive.

Q. You didn't try to deposit any ballots in that little box, did you?—A. No, sir.

Q. You didn't try to take the partition out and fix it so you could make an effort anyway to deposit these ballots in it, did you?—A. No, sir.

Redirect examination by Mr. FELLOWS:

Q. When these ballots were put back in the box, were they rolled together?—A. Yes, sir; all smoothed out and rolled together and tied up.

Q. So they would take much less space than when separate?—A. After they had gone through those rollers in the box they would become open, consequently would take up more room than as though compact.

Recross-examination by Mr. ADAMS:

Q. The rollers would open and press them together like a flat iron?—A. I don't think it would have a pressure.

Q. They have some pressure, don't they?—A. Yes, sir.

Q. Had pressure enough so they would open up and press the folds of the ballot tighter together as it went through than it was before, unless it was then so tight it would not operate on it at all?—A. To a certain extent it would; but when we opened the ballots we found the ballots spread out more or less.

Q. The rollers through which the ballots went into that ballot box were rubber probably, were they not?—A. I think wood.

Q. They came close together so you had to turn a crank in order to get the ballots down through?—A. Yes, sir; I could force a ruler down between them, but could not force a ballot in without turning the crank.

Q. By forcing a ruler in you would press the rollers apart?—A. Yea, sir.

Q. So to get a ruler in you would have to press the rollers apart to get the ruler between the rollers?—A. Yes, sir.

WILBUR C. MARTIN, being first sworn to testify to the truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Martin, where do you reside?—A. Carmel.

Q. How long have you lived in the township of Carmel?—A. Five years.

Q. You were living there on the 5th of November last?—A. Yes, sir.

Q. What, if anything, did you have to do with the election?—A. I was clerk of the board.

Q. You commenced in the morning?—A. Yes, sir.

Q. You kept one of the poll lists?—A. Yes, sir.

Q. Who kept the other one?—A. Mr. Cole.

Q. What was his position in the township?—A. He was township clerk.

Q. Did you take a recess at noon?—A. Yes, sir.

Q. How long a time?—A. An hour.

Q. Did the board go together to get their dinners?—A. No, sir.

Q. During the noon hour was the question of the capacity of the ballot box discussed?—A. It was to some extent.

Q. Why was that?—A. We were afraid it would not be large enough hold all the ballots.

Q. At that time were means discussed as to how they would get along with it? Or was that later?—A. That was later.

Q. What means were discussed for the purpose of getting along with it?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. We hardly knew what to do and we talked the matter over and wondered what we ought to do and, of course, there was no conclusion arrived at definitely at noon.

Q. Later was the conclusion arrived at?—A. Yes, sir.

Q. That was discussed among the members of the board?—A. Yes, sir.

Q. Do you know whether it was discussed with anyone not members of the board?—A. I think it was.

Q. As a result of that discussion what was it finally determined to do?—A. We opened the box up and took the count.

Q. Was that done?—A. Yes, sir.

Q. Where was the count taken?—A. On the table a little ways from where the ballot box stood when voting.

Q. Who did the counting?—A. Mr. Huber, Mr. Cushing, and Mr. Clements.

Q. Was Mr. Huber the gentleman who has been here?—A. Yes, sir.

Q. He was a regular member of the board?—A. Yes, sir.

Q. Mr. Clements and Mr. Cushing were both members or both residents of the township, were they?—A. Yes, sir.

Mr. ADAMS. I move to strike out the answer, and object to the question whether he was a regular member of the board, on the ground that it is incompetent and the conclusion of the witness.

Q. Were they good, substantial citizens?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. I always thought they were.

Q. They are recognized there as honorable, upright men?—A. Yes, sir.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and hearsay.

Q. Did they have the count completed before the polls were closed?—A. No, sir.

Q. Was the result as they went along made public, or anything of that kind?—A. Not that I heard.

Q. Do you recollect the circumstance of some voters being instructed?—A. I saw several persons there asking for instructions.

Q. How many would you say, all told?—A. I don't remember of but two, that I remember of.

Q. Who was called in there besides members of the board when they were being instructed?—A. Mr. Cushing and Mr. Huber assisted them.

Q. Mr. Cushing was the Democratic challenger?—A. Yes, sir.

Q. Was he present during the installation of the board?—A. Yes, sir.

Q. Was there any attempt at electioneering that you saw or heard around the board?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness; if anything of that kind occurred, the witness should state what it was.

A. I didn't hear of anything.

Q. You did not continue until the votes were all finally counted, until the final count was made, or did you?—A. Yes, sir; I did.

Q. Who read the ballots after the polls had closed?—A. Mr. Huber.

Q. He read all the ballots?—A. Yes, sir.

Q. Do you remember the names of those who were instructed?—A. Mr. Clements was one and Mr. Darling was the other man's name.

Q. Has Clements any physical defect?—A. His eyes are bad—a bad eye.

Q. That would be apparent to anyone who saw it?—A. Yes, sir.

Q. Mr. Dowling, the other man, did he ask to have his ballot marked or ask instructions as to how to vote?—A. I don't know.

Cross-examination by Mr. ADAMS:

Q. Mr. Clements had one defective eye?—A. I think so.

Q. The other one was not defective?—A. I didn't know him very well.

Q. That is the way you understood it?—A. Yes, sir.

Q. One eye you could see was not right, could you, that day there?—A. Yes, sir.

Q. The other eye looked all right?—A. Well, no; it did not. If I remember rightly he had glasses on—a glass on one eye.

Q. On the bad eye?—A. It was covered in some way, I don't know exactly how.

Q. The other one was not covered and looked all right?—A. No, sir; it did not.

Q. How did it look?—A. It looked as though he could not see very well out of that.

Q. What was its appearance?—Describe it.—A. It looked as though he couldn't see very good; he walked slow, kind of felt his way around. Of course, he took his ballot and held it up to the window and looked at it, then asked for some assistance of some kind to help him.

Q. That was Clements?—A. Yes, sir.

Q. This man Dowling, did some one go in the booth with him?—A. He went in first then opened the door and asked for some help, and those two gentlemen went in.

Q. He was not sworn; no oath was administered to him at all?—A. No, sir.

Q. He looked all right physically to you?—A. Yes, sir.

Q. He did not say that anything was wrong with him physically?—A. No, sir.

Q. He was not blind?—A. Not that I saw.

Q. You knew him before that day?—A. Not a great while.

Q. You had seen him before?—A. Yes, sir.

Q. You had seen him move around before that election day?—A. Yes, sir.

Q. He moved around all right, there was nothing to indicate that there was anything physically wrong with him, nothing to indicate there on that day when he asked for help that there was anything wrong with him physically?—A. No, sir.

Q. At noon you adjourned?—A. Yes, sir.

Q. What did you do with the ballot box?—A. We left it where we used it.

Q. Did you put any seal on it? At noon?—A. No, sir.

Q. When you went away to lunch and left it there, there was no seal on it?—A. We didn't all leave the building.

Q. Who didn't leave the building?—A. I and Mr. Cole stayed.

Q. Didn't you go to lunch?—A. No, sir; I stayed to my lunch.

Q. Did you stay in the room where the ballot box was?—A. In the same room, yes, sir; I did.

Q. Was there any partition between you and the ballot box when you stayed there at noon?—A. Just a picket fence, you might say.

Q. So you and who else was left there alone with the ballot box?—A. Mr. Cole, the clerk.

Q. He didn't go to lunch that day?—A. No, sir.

Q. He brought his lunch?—A. Yes, sir.

Q. Where were the election books?—A. They were on the table.

Q. They were not put in the ballot box at noon and locked in?—A. No, sir.

Q. They were left on the table?—A. Yes, sir.

Q. Just as you got through using them; they were left right there until the rest of the board came back?—A. Yes, sir.

Q. You stayed there until the polls closed—you stayed there until the board left that night after they got through with what they were doing?—A. Yes, sir.

Q. You left there and got through about what hour?—A. I think about 11 o'clock, or something like that.

Q. Was there anyone left in the room when you left?—A. Yes, sir; the township clerk.

Q. Was there anybody else?—A. I think Mr. Huber was there; I am not positive about that, though.

By Mr. FELLOWS:

Q. Were those ballots tampered with during that noon recess?—A. No, sir.

Q. Or the books—A. No, sir.

By Mr. ADAMS:

Q. Didn't you go out any time that day while you were there?—A. Yes, sir.

Q. How many times?—A. I couldn't say.

Q. When first?—A. I think the middle of the afternoon, once.

Q. How long were you gone?—A. A minute or two.

Q. Is that all?—A. Yes, sir.

Q. Just a minute or two?—A. Yes, sir.

Q. Did you go out again that day?—A. I was out to supper; I don't remember of going out in the afternoon.

Q. Were you out to supper?—A. Yes, sir.

Q. Did they take an adjournment at supper time?—A. Yes, sir.

Q. The board took an adjournment?—A. Yes, sir.

Q. Did they all go out to supper?—A. No, sir.

Q. Who left when you did?—A. Mr. Huber.

Q. Who remained there when you went away, you and Huber?—A. The rest of the board.

Q. When you got back did you find anybody there?—A. The rest of the board was there waiting for us.

Q. Those that you left there when you went, were they still there when you came back?—A. Yes, sir.

Q. How long were you gone, then? Were they counting ballots when you went to supper?—A. No, sir.

Q. Were they counting ballots when you go back?—A. No, sir.

Q. What were they doing?—A. Just getting ready to go to work again.

Q. What were they doing?—A. They were eating their lunch.

Q. What were they doing when you got back?—A. They were squaring around the table, getting ready to go to work when we came in.

Q. Did they have the ballots there looking at them?—A. I don't think they were doing anything with the ballots.

Q. Where were the ballots?—A. In the table.

W. L. HUBER, recalled, testified further on behalf of the contestee, as follows:

Direct examination by Mr. FELLOWS:

Q. I show you Exhibit 17. Are the figures that appear in here opposite the names of Representatives in Congress the correct figures of the number of votes each of such candidates received at that election?—A. To the best of my knowledge.

Q. You know of no reason why they are not?—A. I do not.

Cross-examination by Mr. ADAMS:

Q. Did you put them down in the book?—A. I did not.

Q. You didn't keep the tally, did you?—A. No, sir.

Q. You didn't keep the tally yourself?—A. I did not.

Q. You simply called off the names of the candidates who received votes on each ballot, and as you did the calling off the tally clerks recorded something?—A. They did.

Q. You didn't watch the tally book to see whether they put it down correctly or not?—A. No, sir; I did not.

Q. Now, you swore in Mr. Cushing and Mr. Clements?—A. Yes, sir.

Q. As clerks of the election?—A. Yes, sir.

Q. Cortez Cushing and William Clements?—A. Yes, sir.

Q. You personally administered the oath to them and each of them, as clerks, to perform the duties of clerk at that election?—A. Yes, sir; I did.

Q. You are sure about that, are you?—A. Yes, sir.

Q. I call your attention to Exhibit 27, page 3 thereof, and I wish you would examine the last certificate on page 3 and tell me now whether you swore either of those men in as clerks of that election?—A. Yes, sir; that word "inspector" has been written in since.

Q. Whose handwriting is the word "inspector" in?—A. I don't know. "Clerk" is crossed out and "inspector" written in.

Q. Don't you know that you swore each of them in as inspector instead of clerk?—A. I did not.

Q. Don't you know that is the return that was made that day by the board, and part of that return was just as it is there, that they were sworn in as inspectors each one of them, Mr. Cushing and Mr. Clements?—A. No, sir.

Q. Did you hear Mr. Cushing's testimony when on the stand; were you in the room?—A. Yes, sir; part of the time.

Q. Did you hear him testify that he was sworn in as an inspector of that election?—A. I did not.

Q. You didn't hear him testify to that?—A. No, sir.

Q. You say now that he was not sworn in as an inspector of that election, do you?—A. I do; I administered the constitutional oath as clerk of the election.

Q. That is your signature there under each of those certificates I call your attention to—W. L. Huber?—A. Yes, sir.

Q. It appears on the book that the word "clerk" is crossed out and the word "inspector" written over it in each certificate?—A. Yes, sir.

Q. Do you know whose handwriting that is?—A. No, sir; I do not.

Q. Well, you see, do you, that that word "inspector" was not written over the word "clerk" in those two certificates before that return was signed or was left with the township clerk on the night of that election there in the voting place?—A. It was not written there when I signed that certificate.

Q. It was not written in at that time?—A. No, sir.

Redirect examination by Mr. FELLOWS:

Q. As you read the names from the ballots how did they call back to you—the checkers?—A. If any one received four, then when one made five they would say "five," and the next one would be one.

Q. Otherwise they would give the number they had?—A. Yes, sir.

Q. They would call back the correct numbers to you?—A. One would call the number and the other would say "check."

Q. They kept that up all the way through?—A. I think so.

Q. So if there had been any mistake in checking you would have noticed it?—A. I think so.

Q. And it would have been discovered at the time?—A. Yes, sir.

Q. This exhibit that Judge Adams called your attention to, No. 27, the word "clerk" is in printed form in each one of those?—A. Yes, sir.

Q. That is the oath you administered to them?—A. Yes, sir.

Q. The word "inspector" is written with a pen and ink?—A. Yes, sir.

Q. That is not your writing, the word "inspector"?—A. No, sir.

Q. They were sworn in as clerks, and the blank that was used for that was the form for clerks?—A. Yes, sir.

Q. You say that word "inspector" up there, would you, looks like Mr. Cole's handwriting?—A. I am not familiar with his handwriting; I couldn't say; it might possibly be.

Mr. ADAMS. I move to strike that out as not the proper way to prove handwriting, and as incompetent and the conclusion of the witness.

Recross-examination by Mr. ADAMS:

Q. You don't know when you called "check" whether the other checked or not?—A. I didn't call "check."

Q. When they called "check" you don't know whether each man put a cross mark of the four tallies?—A. I do not.

Q. All you know is what they called out?—A. Yes, sir.

HERBERT SHAVER, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows in behalf of the contestee:

Direct examination by Mr. FRANKHAUSER:

Q. You live in Carmel?—A. Yes, sir.

Q. How long have you lived there?—A. All my life.

Q. How old are you?—A. I am 49.

Q. What official positions have you held in that township?—A. I have been treasurer two years and justice of the peace since 1906.

Q. Were you justice of the peace in 1912?—A. Yes, sir.

Q. On the 5th of November?—A. Yes, sir.

Q. Were you a member of the election board?—A. Yes, sir.

Q. Now, on this day in question, what part of the work was appointed to you—what part did you do?—A. I handed the ballots to the voters.

Q. Who put the initials on?—A. Mr. Huber.

Q. And you handed the ballots to the voters?—A. Yes, sir.

Q. Something has been said about certain gentlemen asking for instructions and assistance; explain on the record all you remember about that.—A. You mean Mr. Clements?

Q. Anyone who came in there. How many were there?—A. Oh, there were three or four.

Q. What did you do—what was done?—A. They asked for assistance.

Q. Do you mean assistance or instructions?—A. Instructions.

Q. Tell what they did and we can tell what it was.—A. Most of them said they wanted some help to vote.

Q. What was done?—A. I would call Mr. Huber and Mr. Cushing and they would see to it.

Q. How many do you think they went in the booth with?—A. I believe about four.

Q. Was Mr. Cushing in every time Mr. Huber went in?—A. I think he did.

Q. Do you know who those voters were?—A. I do.

Q. Who were they?—A. Mr. Clements, Mr. Downs, Earl Housington, and I think Mr. Knapp.

Q. Mr. Clements was an old man?—A. Nearly 70.

Q. What was the trouble with him?—A. One eye was entirely gone and he couldn't see very well with the other.

Q. What did he say and what was done?—A. I think he went in the booth and came out and wanted some help.

Q. What did he say and who was it said to?—A. It was said to me.

Q. What did you do then?—A. I called Mr. Huber and Mr. Cushing.

Q. What did they do?—A. They went with him in the booth.

Q. That was the last you knew of it?—A. Yes, sir.

Q. Mr. Downs, what was the trouble with him?—A. I don't believe he can read.

Q. How old is he, about?—A. Oh, probably 75 or 70.

Q. What did he do, did he ask for assistance?—A. I think so.

Q. What was done then?—A. I called Mr. Huber and Mr. Cushing.

Q. What did they do, if you remember?—A. They went with him in the booth.

Q. Mr. Housington, what was his trouble?—A. I don't believe he can read.

Q. Did he say that?—A. No, sir; he did not—I don't think he did.

Q. What did he say?—A. That he would have to have a little help.

Q. What was done?—A. I called Mr. Huber and Mr. Cushing again.

Q. What did they do, do you remember?—A. They went in the booth.

Q. Mr. Knapp, how was it with him.—A. He was almost blind.

Q. Do you know of your own knowledge of any of those four having their tickets marked?—A. I do not.

Q. You don't know how many they actually marked?—A. I do not.

Q. You think that was the outside number who asked for instructions and assistance?—A. I do.

Q. Coming up toward noon, what occurred there with reference to the ballot box?—A. It was getting pretty nearly full.

Q. What was said and done?—A. We talked it over a little and at noon Mr. Griffin tried to get McPeck.

Q. Who was McPeck?—A. The prosecuting attorney, and he could not get him.

Q. What was he going to phone him for?—A. To see what we were to do.

Q. You didn't get him?—A. No, sir.

Q. Go on.—A. About 2 o'clock we emptied the ballot box.

Q. Before that, was there any talk with anybody else around there?—A. Yes, sir.

Q. Tell that.—A. Mr. Griffith asked Mr. Ells what he thought—

Mr. ADAMS. I object to any conversation with Mr. Ells; he was not a member of the board, and it is incompetent, irrelevant, immaterial, and hearsay.

A. He asked Mr. Ells what he thought about it, and he said as far as he was concerned it would be all right.

Q. Mr. Ells was one of those who have been testified about here; he was the Democratic candidate for register of deeds?—A. Yes, sir.

Q. Are you acquainted with him?—A. Yes, sir.

Q. You had known him for some time?—A. Yes, sir.

Q. What sort of a man is he, as to being active in politics?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Quite active in his party.

Q. Do you know of any particular office he holds there now in the party organization?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. I couldn't say.

Q. Whether he was active in politics or not; what do you say to that?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. He always has been; yes, sir.

Q. How long has he lived there?—A. I guess all his life.

Q. What office has he held, and about how long has he held it?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and not the best evidence.

A. He used to be clerk year after year—I don't know how many years—then he has been supervisor several terms.

Q. When he held those offices he was a member of the election board?

Mr. ADAMS. Objected to as incompetent and immaterial and not the best evidence.

A. Yes, sir.

Q. Have you known him to sit with the board there?—A. Yes, sir.

Q. Give some idea how many times.

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. Several times; I couldn't just name them.

Q. How many times have you sat with the board?

Mr. ADAMS. Objected to as incompetent and immaterial

A. I presume 10 or 12 times.

Q. I want to ask you whether when it came up to this time when the box was full what was done with reference to the box; what did you do to relieve the box?—A. We closed the polls and unlocked it and opened it and emptied it.

Q. Who unlocked it?—A. Mr. Griffin.

Q. After it was unlocked what was done?—A. It was emptied on the table.

Q. Then what?—A. It was emptied and relocked and the polls opened.

Q. Did you have any other ballot box to use?—A. We had two little wooden boxes.

Q. What were you doing with them?—A. We used one for woman suffrage and for the amendments.

Q. What was the other used for?—A. The other one the lock would not work and had not for years.

Q. How big was that box?—A. As large as that book and probably 6 inches high.

Q. What book did you hold it?—A. The tally sheet book.

Q. Was it discussed whether you could use that box or not? Did you talk about it, you and the other members of the board?—A. I couldn't say.

Q. Anyway, who went to counting those ballots then?—A. Mr. Huber, Mr. Cushing, and Mr. Clements.

Q. Was Col. Spencer there?—A. Yes, sir.

Q. At that time?—A. I think he was.

Q. Now, where is his home?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

Q. Where was it in November?—A. Charlotte.

Q. What business did he have out there, if you know?—A. I don't know.

Q. How many miles is it from here there?—A. Three, I think.

Q. How long did he stay there? Was he there all day?—A. He was there all day, I think.

Q. Out and in. Was he there after the polls closed?—A. I think he was.

Q. What did he appear to be doing there?—A. I couldn't say.

Q. Was he a Democrat in politics?—A. Yes, sir.

Q. What do you know about his activity in politics?

Mr. ADAMS. Objected to as incompetent and immaterial.

A. I guess he is quite active.

Q. That is from your own observation?—A. Yes, sir.

Q. Did he make any suggestions that day, that you heard, about the course to pursue?—A. I couldn't swear that he did.

Q. Was he around there that day, so far as you knew, working for any particular person?—A. Not that I know of.

Q. Did he have his automobile there that day?—A. Yes, sir.

Q. Did he bring any voters to the polls that you know of?—A. Not that I know of.

Q. Did he have that automobile decorated with any banners that day?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. I don't know.

Q. Did you see him during that campaign have any signs on his automobile?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. I couldn't say that I did.

Q. Did he, as far as you know—was he there, as you remember, at the time this course was decided upon to open the box?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. I think he was.

Q. Was Mr. Ellis also there?—A. Yes, sir.

Mr. ADAMS. Objected to as irrelevant and immaterial.

Q. Now, did you stay there until—did they complete the count; the afternoon count—up to the time the polls closed?—A. No, sir.

Q. About how many ballots do you think they had left?—A. A few; I couldn't tell how many.

Q. After that was the count continued?—A. Yes, sir.

Q. When was it completed?—A. About half past 10 o'clock.

Q. What did you do toward counting after 5 o'clock?—A. I think I looked over Mr. Huber's shoulder at the tickets.

Q. As he read them?—A. Yes, sir.

Q. Did you do that all the while until he got through?—A. I couldn't say.

Q. Who did the tallying after the polls closed?—A. Mr. Cole and Mr. Cushing.

Q. Did you watch the tally?—A. No, sir.

Q. Where were they, up where you were?—A. At the same table.

Q. How was the count conducted; give a brief description of it?—A. Mr. Huber would read the names off, and they would make a record of it in that column and call "one, two, three, four," "check."

Q. Are you acquainted with those two boys?—A. Yes, sir.

Q. What sort of gentlemen are they?—A. They are all right.

Q. Are they men of honesty and integrity, as far as you know?—A. They are.

Mr. ADAMS. Objected to as incompetent and immaterial.

Q. Mr. Huber, what sort of a man is he in the community where he lives?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. He is a good man.

Q. Is he a man who, in your opinion, who would miscall any of those ballots?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. No, sir.

Q. When the vote was completed—or the ballots counted, I should have said—what did the board do with the returns?—A. Filled out the book, put it back in the box, and locked it.

Q. Who locked the box?—A. Mr. Huber.

Q. Now, state whether you gentlemen were all there together when the statements were signed, and returns.—A. We were when they were signed; yes, sir.

Q. Do you remember whether or not the supervisor went away from there, Mr. Griffin?—A. Yes, sir.

Q. Was everything signed up before he left?—A. I think so.

Q. Did you sign them all yourself, too?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. Did you see the ballot box was sea'ed up when you left?—A. Yes, sir.

Q. Who sealed it?—A. Mr. Huber used the stamp.

Q. How was it sealed?—A. With a piece of canvas over the hole and wax melted with a match and stamped.

Q. A stamp on it?—A. Yes, sir.

Q. Who did that?—A. Mr. Huber used the stamp.

Q. And Mr. Huber locked the box?—A. Yes, sir.

Q. And the ballots were put in the ballot box that had been voted for the candidates for office that day at that election?—A. Yes, sir.

Q. Any books put in?—A. I think there was.

Q. What books were put in?—A. I think the poll book.

Q. Any other books?—A. I couldn't say.

Q. You say you think the poll book was put in; do you know whether it was or not?—A. Yes, sir; I believe I do.

Q. Who put it in?—A. I couldn't say.

Q. Did you see anybody put it in?—A. I believe I did.

Q. Who?—A. Well, I couldn't tell you who.

Q. Well, was it somebody you knew?—A. Certainly.

Q. You can't tell us who it was?—A. No, sir.

Q. Mr. Cole and Mr. Cushing did all the counting that was done there?—A. I think they did; yes, sir.

Q. Up to the time there was any tallying to do, and as soon as there was any tallying to do, Mr. Cushing and Mr. Cole did all the tallying?—A. Yes, sir.

Q. What time did Mr. Spencer get there that day?—A. He came a pretty good time in the morning.

Q. I would not know whether 4 o'clock in the morning or some other time in the morning?—A. Probably 8 o'clock.

Q. You say he got there about 8 o'clock?—A. Somewhere in that neighborhood; yes, sir.

Q. Might it not have been 9?—A. It might have been.

Q. Might have been 10?—A. I don't think so.

Q. Was it 9?—A. I couldn't say.

Q. You don't know whether 8 or 9?—A. Not for sure.

Q. He was in there all day, was he, in the voting place?—A. I don't presume he was there every minute; he was outside, I think, part of the time.

Q. You didn't see him outside, did you?—A. Yes, sir.

Q. Did he stand out in front some?—A. A little bit.

Q. Were there some time or times when he was not inside you saw him standing outside? Were there any times he was not inside that you saw him outside that day?—A. No, sir.

Q. Was he in there every minute after 5 o'clock until you got through with the count?—A. No, sir; he didn't stay until we got through.

Q. What time did he leave?—A. Probably 6 o'clock.

Q. Was that the last you saw of him that day?—A. Yes, sir.

Q. You were a Republican that day?—A. Yes, sir.

Q. Mr. Huber was a Republican that day?—A. Yes, sir.

Q. Mr. Griffin was a Republican?—A. Yes, sir.

Q. D. C. Cole was a Republican?—A. Yes, sir.

Q. Mr. Clements—what was his politics that day?—A. He was a Republican.

Q. Wilbur C. Martin—what was his politics?—A. He was a Democrat.

Q. Who was chairman of your board?—A. Mr. Griffin.

Q. I understood you to say a while ago when some of those men came in for instructions that day that you directed who should go into the booths with them?—A. I did; I generally called Mr. Cushing and Mr. Huber.

Q. Mr. Griffin was chairman of the board, wasn't he?—A. Yes, sir.

Q. Why didn't he call out who should go in; don't you know?—A. I don't know.

Q. But he did not call out; you designated who should go in with these fellows when instructed?—A. Yes, sir.

Q. None of those men who applied for help there that day to mark their ballots were sworn—no oath was administered to them before the inspectors went in the booth with them?—A. No, sir.

Q. You opened your ballot box at 2 o'clock in the afternoon, and the votes in the ballot box began to be counted then?—A. Yes, sir.

Q. That was the ballot box in which all the votes for the different candidates for Representative in Congress had been deposited and had been voted there by the electors up to that time?—A. Yes, sir.

Q. You closed the polls when you opened the ballot box?—A. Yes, sir.

Q. After you had closed them to open that ballot box?—A. Yes, sir.

Q. How long were the polls closed?—A. Two or three minutes, I think.

Q. Did you receive any votes during the time that adjournment was in force?—A. No, sir.

Q. Were any men in the booths during the time that adjournment was in force to open that ballot box?—A. I couldn't say as to that.

Q. Were there some in the booths at that time?—A. I don't know.

Q. You think that four men asked for instructions or assistance in marking their ballots?—A. I think so.

Q. Were there more than four?—A. I would not think there were; possibly there might have been another.

Q. Mr. Huber put the initials on the ballots?—A. Yes, sir.

Q. While he was reading the ballots, beginning at 2 o'clock, he didn't initial any ballots after that time, did he?—A. I think not; he had enough initialed.

Q. How many did he have initialed when he began reading the ballots?—A. I don't know.

Q. The rest had not yet voted? There were how many ballots voted after Mr. Huber began counting at 2 o'clock?—A. I don't know that.

Q. About how many would you say were voted after Mr. Huber began counting the ballots—when that ballot box was opened at 2 o'clock up to the time your polls closed?—A. I couldn't say.

Q. Sixty?—A. I couldn't guess anywhere near it.

Q. Wouldn't you say that at least 60 ballots were cast from 2 o'clock until 5 o'clock that day?—A. I think there were; yes, sir.

Q. Were those all initialed by Mr. Huber before he began counting?—A. Yes, sir.

Q. So that he had more than 25 ballots already initialed and not yet voted when he began to count about 2 o'clock that day?—A. Yes, sir.

Q. Did anybody else initial any ballots there at that election except Mr. Huber?—A. No, sir.

Q. Did you initial any?—A. No, sir.

Q. You acted all day in the capacity of handing ballots to voters?—A. Yes, sir.

Q. Did you go into the booths with any one of those men who asked for instructions or assistance in marking their ballots?—A. No, sir.

Q. How long had you had this ballot box there in that township prior to the 5th day of November, 1912, which you used on that day to deposit the votes for Representative in Congress in?—A. I don't know.

Q. Had you had it at the election for Congressmen two years before that?—A. Oh, yes.

Q. Did you have it at the presidential election and the election for Congressmen four years before the election held November 5, 1912?—A. Yes, sir.

Q. The election for presidential electors and Congressmen held four years prior to November 5, 1912, this particular ballot box in which you deposited those ballots for Representative in Congress on November 5, 1912, was used at your election for depositing ballots for Representative in Congress four years prior to that time, was it not?—A. I think so.

Q. Did you act on the board of that township four years prior to the election that was held November 5, 1912, when Representatives in Congress were voted on in that township?—A. I couldn't say.

Q. Refresh your recollection a little about that and see if you can't think back to that time?—A. I don't believe I was.

Q. Do you know who did act on your board from your own observation or information who acted on your board four years prior when Congressmen were voted for. Four years prior to November 5, 1912?—A. I think Mr. Ellis was chairman—our supervisor.

Q. Do you recall any other members of the board?—A. I do not; no, sir.

JOHN C. NICHOLS, being first sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. You live in Charlotte?—A. Yes, sir.

Q. You are an attorney at law?—A. Yes, sir.

Q. Practicing law now?—A. Yes, sir.

Q. What office do you hold, if any?—A. Circuit court commissioner.

Q. What other official positions have you held in the county?—A. I have been justice of the peace and county clerk.

Q. Have you been deputy county clerk also?—A. Yes, sir.

Q. When were you elected circuit court commissioner?

Mr. ADAMS. I object to it as not the best evidence.

A. I was elected at the last election.

Q. I mean the last time?—A. Yes, sir.

Q. November 5, 1912?—A. Yes, sir.

Q. Now, on that election day where was your residence in the city?—A. In the second ward.

Q. Were you a voter in the second ward?—A. Yes, sir.

Q. Where did the second ward conduct its election?—A. In the basement of the courthouse.

Q. In the building we are now in?—A. Yes, sir.

Q. You were at that time acting as clerk, were you?—A. Yes, sir.

Q. County clerk?—A. Yes, sir.

Q. You had been appointed county clerk?—A. Yes, sir.

Mr. ADAMS. I move to strike out the answer as incompetent on the ground that there is better evidence of it, and I object to the question for the same reason.

Q. When were you appointed county clerk?

Mr. ADAMS. Objected to as not the best evidence and as incompetent.

A. I think on the 4th day of November.

Q. When did you begin to act as county clerk?—A. Immediately.

Q. Were you acting as county clerk on the 5th day of November, 1912?—A. Yes, sir.

Q. Where did you vote?—A. In the second ward.

Q. What time in the day?—A. It would be after 10 o'clock and before 2.

Q. You acted as challenger in that ward?—A. Yes, sir.

Q. For the Republican Party?—A. Yes, sir.

Q. As such challenger were you behind the railing?—A. Sometimes.

Q. Were you there all day?—A. No, sir.

Q. What part of the day were you there, or about what portion of the time?—A. Well, I think I began about half-past 7, and was out a little while to dinner, I think I went away about half past 1 or 2.

Q. Something has been said here on the contestant's side that you did some work there on the election board; I wish you would explain how you came to do it, and what you did?—A. Mr. Hamilton was taken sick and Mr. Knowles the other member of the board and one of the aldermen—

Q. Who was Mr. Hamilton?—A. He was one of the aldermen; he was the junior alderman of the second ward and Mr. Knowles was the senior alderman.

Q. He was taken sick; what do you know about that?—A. I know what he said.

Q. Tell it.—A. He said he was sick and started for home, as I understood it, and at the time I was sitting just outside of the rope.

Q. What time was that?—A. I think near noon. Mr. Knowles had a ballot in his hand extending it to an elector that wanted to go into the booth, one had just came out and he asked me to take that ballot and deposit it in the box, and I did, and I think maybe four or five or six altogether I deposited in the box.

Q. How long were you in there at that time? How long did it take you to deposit those ballots?—A. I don't think over 10 or 15 minutes.

Q. Who took your place?—A. When I quit depositing ballots, Roy Barber.

Q. How did he come there?—A. I don't know.

Q. Was he a member of the board?—A. No, sir; I understood he was appointed.

Q. After that, did you do anything more that day?—A. No, sir.

Q. Something was said here about you being there in the evening, when counting the votes, and you had some conversation with one of the inspectors; tell about that.—A. Well, they were counting the votes for circuit court commissioner and I thought the way they were counting they were counting votes for me that I was not entitled to and I told them so.

Q. Explain what you mean?—A. For instance—

Q. (Interrupting.) How many candidates were there?—A. There were two on the Republican ticket and one on the Democratic ticket; if a Democrat put a cross in front of my name without scratching off my name I thought I was not entitled to the vote.

Q. Were you consulted about that?—A. It was talked there between Mr. Knowles, who was reading, and myself.

Q. Your opinion was asked there, was it?—A. No, sir.

Q. Did you at that time suggest to him or dictate how the vote should be counted?—A. I didn't dictate how it should be counted; I suggested how it should be counted.

Q. With reference to your own interest, I mean did you suggest how it should be counted with reference to the office of circuit court commissioner, or did you suggest how it should be counted in reference to anybody else?—A. That is the only place the question arose.

Q. Did you do any electioneering around there for John M. C. Smith that day?—A. No, sir.

Q. There at the polls or inside of the railing or outside?—A. No, sir.

Q. Have you told all there was about the suggestion you made about counting the tickets?—A. Yes, sir; I believe I have.

Q. Where were you standing at that time?—A. Inside of the railing just in front of Mr. Knowles and Mr. Towne.

Q. Did you touch any ballots yourself?—A. No, sir.

Q. Or assist in the count any?—A. No, sir.

Q. Who was Mr. Towne?—A. He was a Democrat. I don't know whether he acted as challenger or not; he was there most of the time all day.

Q. Where was he at the time of this?—A. Inside, at the right of Mr. Knowles, touching elbows with him during the count and handling every ballot that came through Mr. Knowles's hands.

Q. Did he hear this conversation between you and Knowles?—A. Yes, sir.

Q. Did he take any part in it?—A. I think he did.

Q. Mr. Towne lives here in town?—A. Yes, sir.

Q. What business is he in?—A. I don't know as he has any, unless loaning money.

Q. Have you seen him present at any of these meetings?—A. He was here some of the time to-day.

Q. Now, Mr. Nichols, when the returns came in from the election around the county, who received the envelopes?—A. They were received at the county clerk's office by myself or the deputy.

Q. Who was the deputy?—A. Edna Lohr.

Q. Was Mr. Pray around there after election and acting as clerk?—A. He was there some of the time.

Q. Who acted as county clerk when the returns were being received?—A. I did.

Q. Something has been said by Mr. Robinson about his coming down here on the 6th or 7th, one or both, and finding the returns being handled more or less by different ones; what do you know about that?—A. After we had taken the tabulation I had no objection to anybody looking at them.

Q. Do you know about their being taken out of the office at that time?—A. No, sir.

Q. Were they taken to the judge of probate's office by anybody that you know of?—A. I don't know of it.

Q. Do you know anything about adding up the results on an adding machine—of their being taken to the treasurer's office?—A. No, sir.

Q. What do you know, if anything, about Mr. Davis and William Smith handling those returns?—A. Well, now, I saw Mr. Davis there, and he got some information from them, and William Smith was there. I don't know whether he ever touched the returns or not.

Q. Did William Smith or Mr. Davis take those returns out in the corridor?—A. Not to my knowledge.

Q. Or did you have them out in the corridor, or Mr. Pray?—A. I don't know; I didn't.

Q. Did anybody else you know of from your office?—A. I don't know of any one having them outside of the office.

Q. If Mr. Robinson saw any papers in the hands of those people, what papers were they?—A. I don't know.

Q. When you went in there to add those up, what paper did you have?—A. I didn't go in there.

Q. Who, if anybody, went in there?—A. I don't know about that; I don't know of anybody going across to have them added.

Q. You say you tabulated them; what paper did you have for that?—A. On a blank that the secretary of state had for that work.

Q. That is what you mean by tabulation?—A. Yes, sir.

Q. Was that tabulation used by the county canvassers?—A. Yes, sir.

Q. Who was clerk of the board of county canvassers?—A. I was.

Q. Were those returns that came to your office open to the examination of the public if they desired to examine them?—A. Yes, sir.

Q. You might name some that examined them before the board of county canvassers met; was Mr. Robinson there?—A. Yes, sir.

Q. Did Mr. Carney examine them?—A. No, sir; I would not say that. He was there the day we met; I don't know whether he was there before. Mr. Towne saw them before, and I think Mr. McPeck and Mr. Pray.

Q. Anybody that wanted to?—A. Anybody that wanted to look at them had the right to.

Q. Did you see John M. C. Smith over there to see them?—A. I don't recollect that he was.

Q. What do you know about the returns that went to the judge of probate's office? Did you ever see any of them open before the board of canvassers met?—A. I never saw any of those returns except as they happened to be in the hands of the mail carrier, who delivered at the office before he goes to the judge of probate's office; he had some of them there, and I remember of seeing them there.

Q. What do you say in reference to one of them becoming open?—One of them became open while at the desk in his hand.

Q. How did it happen?—A. He had hold of it by the corner, and in some way it came open.

Q. Do you remember what township that was?—A. I do not.

Q. That went on into the judge of probate's office?—A. Yes, sir.

Q. What did he do when it opened?—A. He wrote on it and signed his name.

Q. What did he write?—A. I don't remember the words, but that it was in bad condition.

Q. I will ask you whether the county clerk's office received those returns from all the townships in the county?—A. Yes, sir.

Q. First and last?—A. Yes, sir.

Q. Now, about when did they come in? How rapidly did they come in after the election?—A. Well, I think most of them were in the day following.

Q. Were there some that were not in the day following, or whether they came in in the afternoon?—A. I think possibly Onelda Township was not there the day following; but I think most of them came in on the morning mail, those that came by mail, or in the afternoon, with the exception of Onelda, and I think they came the day following.

Q. Were there any that did not come by mail?—A. Yes, sir.

Q. What townships?—A. Carmel, Chester, Eaton, and the city of Charlotte.

Q. How did they come?—A. They were brought in by the clerks.

Q. Brought in by personal messenger?—A. Yes, sir.

Q. Who brought them in from Carmel?—A. Mr. Cole.

Q. He was the township clerk?—A. Yes, sir.

Q. Who brought them in from Chester?—A. Mr. Petteman, I think.

Q. Was he the township clerk?—A. Yes, sir.

Q. When did he bring them in?—A. On Wednesday; I couldn't tell you what time in the day.

Q. When did Mr. Cole bring them in?—A. Wednesday.

Q. Eaton—who brought them in?—A. I couldn't tell you.

Q. Where is Eaton Township?—A. The city is in part of Eaton Township.

Q. You can't tell who brought them in?—A. I know the clerk there, but I can't tell you whether he brought them in or not.

Q. The city of Charlotte—who brought them in?—A. The city clerk.

Q. He brought them all four in?—A. Yes, sir.

Q. So there were seven of those envelopes not by mail?—A. Yes, sir.

Q. Were they sealed when they were brought in?—A. I think so.

Q. The city of Charlotte—those four—were they sealed?—A. I think so.

Q. You acted as clerk of the board of county canvassers when they met?—A. Yes, sir.

Q. Who were the board?—A. James H. Brown, of Charlotte; Mr. Hawkins, of Charlotte; and George Little, of Grand Ledge.

Q. Brown is a Republican?—A. Yes, sir.

Q. And Hawkins is what?—A. I understand he is a Democrat.

Q. And Mr. Little?—A. I understand he is a Democrat.

Q. So the board consisted of two Democrats and one Republican?—A. Yes, sir.

Q. As you understand?—A. Yes, sir.

Q. When this board of county canvassers met, state what they did with reference to the copies that went to the judge of probate?—A. They used them to compare the tabulation made in the clerk's office.

Q. Who made this tabulation?—A. Miss Lohr.

Q. Did you have anything to do with it?—A. I didn't do any work on it; she did that work.

Q. Were you there?—A. No, sir.

Q. The tabulation was actually made by the deputy clerk?—A. Yes, sir.

Q. Do you know whether in making that tabulation on the judge of probate's returns, whether they compared or not, whether they agreed?—A. I do not.

Q. You don't know about that?—A. No, sir.

Q. Do you know of any discrepancies found in any of the returns?—A. I don't know of any.

Q. When did Mr. Carney appear on the scene and object to this matter?—A. The day after the board had convened.

Q. The board convened the first Monday after election?—A. The first Tuesday.

Q. On the 12th day of November?—A. Yes, sir.

Q. How long were they in session?—A. Not more than two days.

Q. What occurred during that session in regard to the vote on Congressmen?—A. I think that Mr. Robinson filed a protest to the counting of certain precincts.

Q. What precincts?

Mr. ADAMS. I object to that as incompetent and not the best evidence.

Q. Do you know where that protest is?—A. I presume in the clerk's office.

Q. Who is the Mr. Robinson you speak of?—A. He holds some position in the organization of the Democratic Party; I think secretary of the county committee.

Q. Was Mr. Davis, of Battle Creek, up here? Do you know him?—A. Not at that time; I don't know that he was.

Q. You didn't see him?—A. I don't think I did.

Q. Did you see him here right after election, the 7th?—A. He was here that week, I don't know whether the 7th or not; he was here shortly after the election.

Q. Did he return after the board of canvassers met?—A. I don't know.

Q. This protest that was filed, do you remember what townships it was filed against?

Mr. ADAMS. We object to it as incompetent and not the best evidence.

Mr. FELLOWS. We will produce the protest.

A. From the townships of Carmel and Sunfield.

Q. That petition was presented in behalf of Mr. Carney, or was it in behalf of Mr. Carney?

Mr. ADAMS. He said in behalf of the county officers.

WITNESS. I didn't say that.

Mr. ADAMS. The record will show what he said.

Q. Who presented that petition?—A. Mr. Robinson.

Q. In whose behalf was it presented?

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial and not the best evidence. The witness should tell what was said and the protest itself should be produced, and it will show what it covers. It is incompetent to show anything by parole until there is some evidence here that the protest itself is lost and cannot be found.

Q. Go ahead.

(Last question read.)

A. I don't know.

Q. What was said about it, if you remember?—A. My recollection is that Mr. Robinson came in and said he had a protest he wished to file.

Q. Has Mr. Robinson been active here in this contest?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

Q. In whose behalf?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. In behalf of Mr. Carney apparently.

Q. In his appearance before the board, if he appeared, what do you know about whose interest he appeared in?

Mr. ADAMS. I object to that as incompetent and calling for the conclusion of the witness as to his appearance: if he said anything, they can ask for what he said; it is incompetent and hearsay and can not bind Mr. Carney, if he was there in somebody else's behalf.

Q. In his appearance before the board, what do you know about in whose interest he appeared in?—A. I do not.

Q. Now, after the board got the returns from the judge of probate's office, what was the canvass of that board based upon, what set of papers, the county

clerk's returns or the judge of probate's or both?—A. They used the returns made to the judge of probate to verify the statement made there for their use.

Q. You acted as clerk during the entire session of the board of county canvassers?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. Were you present all the time the board of county canvassers were in session before the board?—A. No, sir.

Q. The board was in session about two days?—A. Yes, sir.

Q. Not more than two days?—A. I think not.

Q. Did they meet on more than two days?—A. That is my recollection, two days.

Q. Came on one day and held a session that day, and the following day they convened again and adjourned on the second day?—A. That is not my recollection of it, but I would want to look it up before I could state positively.

Q. How much of the time were they in session that you were not in with them?—A. Well, not a great deal of the time; when my services were required I stepped out in the other room.

Q. That doesn't answer the question; how much of the time?—A. I don't know.

Q. You haven't heard the question yet. How much of the time that the board of county canvassers were actually in session that you were not with the board?—A. I couldn't answer definitely.

Q. Were you with the board of county canvassers during its sessions, would you say, half its time?—A. Yes, sir.

Q. Two-thirds of the time?—A. I think so.

Q. Three-quarters of the time?—A. I don't know.

Q. Where did the board of county canvassers meet?—A. In the county clerk's office.

Q. The county clerk's office where that board of county canvassers met had two rooms, didn't it?—A. Yes, sir.

Q. In which room did the board of county canvassers meet, the front room or the back one?—A. In the west room.

Q. Well, one of these is the front room, the public office, isn't it?—A. Yes, sir.

Q. The front part of the courthouse and the other back of it, back of that room?—A. If that is the way you understand it.

Q. Isn't that true?—A. That is not the way I consider it.

Q. That part of the courthouse that fronts on the street that the Phoenix Hotel is on fronts which way?—A. That fronts east.

Q. Then the office, that part of the county clerk's offices which is on the east side of this courthouse, should be the office that the public use?—A. Yes, sir.

Q. Immediately west of that is another office of the county clerk's?—A. Yes, sir.

Q. It was one of these two rooms?—A. Yes, sir.

Q. That was the situation when the board of county canvassers met, as far as the rooms were concerned?—A. Yes, sir.

Q. The board of county canvassers met, then, in which one, the east or west office, to hold their sessions?—A. They held their sessions out there and worked in the west room.

Q. You were performing the duties of county clerk at that time?—A. Yes, sir.

Q. While the board was in session I suppose you performed some duties of county clerk other than those on the board of county canvassers, didn't you?—A. Yes, sir.

Q. In performing those duties other than those you performed in connection with the board of county canvassers you performed them largely in the east office of the county clerk's offices?—A. Yes, sir.

Q. I understood you to say that apparently Mr. Robinson was before the board of county canvassers in Mr. Carney's behalf?—A. I think that is pretty nearly true.

Q. Apparently?—A. Yes, sir.

Q. Why do you say apparently in the interest of Mr. Carney?—A. The contest was filed for the Democratic ticket; I supposed it was in the interest of Mr. Carney.

Q. It may have been in the interest of somebody else?—A. Yes, sir; the whole Democratic ticket.

Q. There was a contest here talked of, was there not, in behalf of or as far as the drain commissioner was concerned?—A. No, sir.

Q. Can you get the protest which you say Mr. Robinson filed?—A. I think so.

Q. When you are excused to-night I want you to get that and come back here to-morrow morning.—A. Yes, sir.

Q. Well, you will endeavor to do that, will you?—A. Yes, sir.

Q. I understood you to say—tell Mr. Frankhauser—that apparently Mr. Robinson was there in Mr. Carney's behalf, and I understood you to say you didn't know in whose behalf Mr. Robinson did appear. Did you so testify?—A. I did not.

Q. And yet you undertake to tell upon the record here that apparently Mr. Robinson was there in Mr. Carney's behalf?—A. That is true, too.

Q. After saying you didn't know in whose behalf he was there?—A. I didn't know; but apparently in his behalf, because—

Q. In other words, you want to have—A. (Interrupting.) Because Mr. Carney is the only fellow who has made a contest.

Q. And yet you want to have it appear upon the record there that Mr. Robinson appeared before that board of county canvassers in the interest of Mr. Carney?—A. It must be, because he is the only one making a contest.

Q. That is the only reason you make that answer?—A. It is a pretty good reason, too.

Q. If there had been anything in Mr. Robinson's mind about a contest in behalf of anybody else, whatever he filed there would have been entirely logical with such a thing in his mind, would it not?—A. Yes, sir.

Q. You don't know whether there were any discrepancies between the tabulation at the county clerk's office furnished to the board of county canvassers and the returns that were filed in the probate court from the various election precincts in this county at that November 5, 1912, election?—A. I do not.

Q. Don't you know that there were one or two precincts, or at least one precinct, that no returns were made from to the office of the judge of probate at the November 5, 1912, election?—A. No, sir.

Q. You don't know that?—A. No, sir.

Q. You never found that out, did you?—A. No, sir.

Q. You don't know that now?—A. No, sir; and I think you never found it out, neither.

Q. Did I ask you whether I had found it out or not?—A. No, sir; but your question conveyed that, though.

Q. You stated that two of the board of county canvassers were Democrats?—A. That is what I think; yes, sir.

Q. You stated that two of the members of that board of county canvassers were Democrats?—A. That is what I think.

Q. Were they?—A. That is the idea I had and the opinion I had.

Q. You say that they were Democrats—two of them—at the time that board of county canvassers met. do you?—A. I do.

Q. You know that to be a positive fact, don't you, that they were Democrats—two of those board of county canvassers?—A. That is what I think about it.

Q. Are you making this record on what you think, or what you know?—A. That is what I think about that.

Q. That is all you know about it, just what you think?—A. That is the reputation, anyway. they have.

Q. That is all you know about whether two of the members of that board of county canvassers were Democrats, is what you think?—A. And their reputation.

Q. You don't know of your own knowledge whether they were or not?—A. I never saw them mark their ballot.

Q. You don't know how they are enrolled?—A. No, sir; I never looked it up; I can find out easily.

Q. Who was this man Davis you have been telling us about?—A. I have not told you very much about any man Davis.

Q. Did you mention Davis's name in your testimony this afternoon?—A. I think it was mentioned in a question.

Q. You testified about it, didn't you?—A. Yes, sir.

Q. So you now understand who I mean by Davis? Will you tell me who this man Davis was and what his given name was?—A. If it is the same man Davis who has been testified about it is John C. Davis, that Mr. Frankhauser asked about.

Q. You understood when I asked you that question who I meant, didn't you?—A. Yes, sir.

Q. Now, do you understand what I am asking you about—the Davis who I mean?—A. If you mean the same man I do.

Q. The same man, the same Davis, where was that Davis there; what was his given name?—A. Mr. Frankhauser said John C. Davis.

Q. Did you know him before you saw him here at that time?—A. I am not certain that I ever did.

Q. You never had met the man before?—A. I don't know.

Q. He is from Battle Creek?—A. Said to be.

Q. What did you see him doing?—A. Well, the first I saw him he came to the clerk's office to get information relative to the election returns.

Q. What did you see him do in there?—A. He was standing up in the clerk's office.

Q. Be kind enough to tell us what things you saw him do?—A. I couldn't tell you all.

Q. All you can remember.—A. I think I saw him setting down some figures on a piece of paper he had; that is all I can tell about that.

Q. Where did he get the figures from?—A. I don't know whether he consulted the election report or not.

Q. I didn't ask you whether you know whether he did or not. Tell me where he got the figures from?—A. I don't know.

Q. When did he first come into your office after November 5, 1912, election?—A. I don't know.

Q. You can't recollect that?—A. No, sir.

Q. Is your memory pretty good?—A. Yes, sir.

Q. When did you first see him in your office after the November 5, 1912, election?—A. My recollection is along about the 8th. I don't know that is so.

Q. Who was in there at that time when Mr. Davis was there?—A. There was Mr. Pray, Miss Lohr, and several others, I can't tell you their names.

Q. You have told us all you can recollect that were in there the time he was in there?—A. Yes, sir.

Q. You think that was the 8th of November, 1912?—A. That would be my remembrance of it now.

Q. In the forenoon, afternoon, or evening?—A. It was sometime during the day, not in the evening.

Q. You don't remember whether in the forenoon or afternoon?—A. No, sir.

Q. Did you see him in there again after that time?—A. At present I can not recall that I saw him on more than one occasion.

Q. You had charge of that office until when, January 1?—A. Yes, sir.

Q. 1913?—A. Yes, sir.

Q. Mr. Pray had been acting as county clerk before you assumed to act as county clerk?—A. Yes, sir.

Q. You say you got in all the returns from all the precincts in the voting places of November 5, 1912, election not later than the 6th of November, 1912?—A. I didn't say that.

Q. Did you?—A. I didn't say so.

Q. I ask you now whether you did?—A. Well, no.

Q. What returns did you get in your office from any of those precincts after the 6th day of November, 1912?—A. Oneida came in on the 7th.

Q. Any others?—A. I can't recollect.

Q. Was Oneida the only one you remember that reached your office later than the 6th of November, 1912?—A. Yes, sir.

Q. Did Oneida come by mail or by carrier?—A. By mail.

Q. Were all the returns that came to your office of the November 5, 1912, election from the various voting places in the county of Eaton sealed when they reached your office?—A. I think they were.

Q. Every one of them?—A. I think so.

Q. You are positive about that, I suppose?—A. I am not positive; I can tell by seeing the envelopes.

Q. Well, you remember they were sealed when they reached your office, don't you, that they were sealed when they came there, securely sealed?—A. That is my memory of it; but I don't know whether that is true.

Q. You were there when each one got to your office, was delivered to your office, were you?—A. No; I will not say that.

Q. You don't remember now that any of these returns were not sealed when they reached your office, do you?—A. No, sir.

Q. Did you open those envelopes containing those returns?—A. I think I did.

Q. What ones did you open first?—A. I don't know.

Q. When did you open Sunfield?—A. I don't know.

Q. Did you open the Sunfield returns?—A. I could tell if I saw the envelopes.

Q. How can you tell?—A. By the appearance of it.

Q. What appearance of it? What is there on that envelope now that would indicate to you whether you opened it or not?—A. The condition is was in when it arrived at the office.

Q. Did you open the Carmel Township returns when they came to your office, the envelope containing the election returns?—A. If it came in while I was there I did.

Q. Is it not a fact that you opened them all as fast as they came in when you were there, if you were in the office when any of those election returns came in, is it not a fact that you opened them about as soon as they came in?—A. Soon after they came.

Q. How soon after?—A. Within half an hour, perhaps.

Q. You did that with reference to the returns that came into your office of the November 5 election?—A. Yes, sir.

Q. As county clerk?—A. Yes, sir.

Q. What did you open them for?—A. To get the information that was in them. I had a right to.

Q. I didn't ask you whether you had a right to.—A. I am telling you I had.

Mr. ADAMS. I move to strike that out and take an exception to his answering questions he is not asked.

Mr. FELLOWS. He said he opened them because he had a right to.

Mr. ADAMS. I take an exception to that remark.

(Whereupon the hearing was adjourned until 9 o'clock a. m., Saturday, March 22, 1913.)

SATURDAY, MARCH 22, 1913—9 a. m.

JOHN C. NICHOLS was recalled and testified further as follows:

Redirect examination by Mr. FRANKHAUSER:

Q. Mr. Nichols, from what date did you commence to act as county clerk?—A. The 4th of November.

Q. When the board of county canvassers were in session, did Mr. Carney appear personally before the board?—A. Yes, sir.

Q. State what occurred.—A. Mr. Carney appeared before the board—

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, the proceedings of the board of county canvassers are a matter of record, and there is better evidence of what occurred.

A. He asked the board of county canvassers to summon in the township inspectors and have them correct their certificate to the statement of votes. He claimed it should show on closing the polls that they immediately proceeded with the counting of the ballots, and that the count was publicly announced.

Q. He claimed that should have been shown by the returns?—A. Yes, sir.

Q. Anything further?—A. I think that was all; he didn't make any claim of any irregularities in the count or anything of that sort.

Q. What did the board do?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and that the proceedings of the board are the best evidence.

Mr. FRANKHAUSER. There is no law requiring them to keep a record.

A. They voted on it and decided that it was not such a matter as they were bound to take notice of.

Q. Did they make a record of that resolution?—A. Yes, sir.

Q. After hearing Mr. Carney's claim the board of county canvassers, consisting of two Democrats and one Republican, held against him?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. Did you look for the paper I questioned you about yesterday—that protest that Mr. Robinson filed?—A. Yes, sir.

Q. Where did you look for it?—A. In the county clerk's office, in the miscellaneous index, which shows it was put away in box 660. I examined that box, and it is not there or in any of the boxes around it; it has been misplaced.

Q. Did you make a copy of that?—A. A certified copy of it.

Q. What is that [handing witness Exhibit 59]?—A. That is the protest of Sam Robinson relative to counting the vote of Sunfield Township.

Q. The original?—A. A certified copy.

Mr. FRANKHAUSER. We offer that in evidence.

Q. Is that the whole of it that Mr. Robinson filed?

Mr. ADAMS. We object to the witness saying that is the whole of it, the certificate to Exhibit 59 shows what it is, and that is conclusive. It is incompetent, irrelevant, and immaterial, and I further object to it because there is no competent evidence to show that the original, of which this purports to be a copy, is lost. The witness at the present time is not the county clerk of Eaton County, and there is no showing on the part of the county clerk or anybody who has charge of that office that the paper, which is claimed by this witness to be a copy, is not now in the possession of the county clerk.

Mr. FELLOWS. We don't have to prove a document in the possession of a public officer is lost in order to use a certified copy of the document.

Mr. ADAMS. I object to the paper as incompetent, irrelevant, and immaterial. I will withdraw the objection made before Mr. Fellows made his statement there; I think he is correct about that, but I do object to the paper for the reasons stated.

Q. Is Exhibit 59 the whole of the protest that Mr. Robinson filed?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial; counsel has now offered Exhibit 59 in evidence and it has a certificate attached to it which is conclusive.

A. That is the whole of it.

Recross-examination by Mr. ADAMS:

Q. You acted as clerk of the board of county canvassers at their first session held after the November 5, 1912, election?—A. Yes, sir.

Q. In other words, you were assuming at that time to act as county clerk of Eaton County?—A. Yes, sir.

Q. You advised the board of county canvassers something?—A. You can use that word. I made suggestion to them, that is all, what I thought was best.

Q. You don't understand what advice means?—A. I have a faint idea what you refer to.

Q. You are a lawyer?—A. Yes, sir.

Q. And have been how long?—A. Since 1889, I think.

Q. You have been a lawyer during all that time in the city of Charlotte, Eaton County, Mich.?—A. Yes, sir.

Q. You have been a justice of the peace?—A. Yes, sir.

Q. When were you first a justice of the peace and where in this county?—A. I would have to look that up.

Q. You can't remember that?—A. I can not the date I was elected.

Q. I don't care for the exact date.—A. I think in 1890.

Q. You were a justice of the peace in 1891, were you not?—A. Yes, sir.

Q. And in 1892?—A. Yes, sir.

Q. And 1893?—A. Yes, sir.

Q. And 1894?—A. Yes, sir.

Q. And 1895?—A. I don't know.

Q. Have you been justice of the peace more than one term?—A. Yes, sir.

Q. While you were justice of the peace the terms of justices of the peace as fixed by law were four years?—A. Yes, sir.

Q. How many different terms since 1890 have you been a justice of the peace in Eaton County?—A. My recollection is my first election was to fill a vacancy, and afterwards I was elected for a full term. I was out eight years, I think, then I was elected twice after that for full terms.

Q. Have you held any other positions than justice of the peace and county clerk in Eaton County?—A. I have been circuit court commissioner and deputy county clerk a great many years.

Q. How long prior to November, 1912, did you fill the office of deputy county clerk?—A. Mr. Hamilton was in when my first appointment was made, I don't know when it was, and I was deputized by Mr. Decke, then with Mr. Warner and Mr. Pray.

Q. Any other positions that you have held in Eaton County than those you have already mentioned?—A. I think that is all.

Q. Most of the time since you were admitted as a member of the bar you have held some county office, or deputy under some county officer, rather than

to practice law to any great extent?—A. Well, that would hardly be a proper inference to draw from that. I was not occupied more than two or three weeks during the time I was with Mr. Hamilton, and with Mr. Decke a little more than that. One time I was engaged in a matter about a month. Just occasionally a day when he was absent or something of that sort.

Q. When you were a justice of the peace I don't suppose you were practicing law very much?—A. I did what I could get to do.

Q. You acted as justice of the peace and also practiced law when a justice of the peace?—A. Yes, sir.

Q. I understood you to say that Mr. Carney appeared before the board of county canvassers when that board was in session some time in November, 1912?—A. Yes, sir.

Q. You were present when Mr. Carney appeared before that board, were you not?—A. Yes, sir.

Q. While Mr. Carney was there you suggested to the board of county canvassers something in opposition to the request that Mr. Carney made to that board, did you not?—A. Yes, sir.

Q. What did you suggest to that board in that regard at that time?—A. My recollection is at that time Mr. Carney was raising the question in Sunfield and Carmel Townships, and I suggested that they keep at their work and take that matter up afterwards.

Q. You were simply clerk of that board and were interested in not having the board delay its work?—A. Yes, sir.

Q. You didn't intend to vote with the board, did you?—A. No, sir.

Q. You were simply clerk of the board?—A. Yes, sir.

Q. Yet you took it upon yourself to tell them not to delay their work?—A. Yes, sir.

Q. They were the judges under the law of the time they might take and the manner of doing their work?—A. Yes, sir; but I didn't want to do a lot of foolishness.

Q. You were so interested in the county of Eaton that you assumed to tell the board of county canvassers that they had better go on with their work?—A. I suggested that to them.

Q. When Mr. Carney was there before that board, what did Mr. Carney say to the board of county canvassers when you were there?—A. Well, I didn't make any minute of it; I don't know that I can tell what was said.

Q. You undertook to tell Mr. Frankhauser, now tell me again what Mr. Carney said?—A. In reference to the certificate? He wanted them to have the boards of inspectors summoned in, the various boards, to correct their returns.

Q. All the boards of Eaton County?—A. Yes, sir; to add to their certificates the fact that immediately upon closing the polls they proceeded to count the ballots, and upon completion of the count publicly announced the result.

Q. You suggested to the board, when Mr. Carney was there, that they go on with the count, without having the boards of Sunfield and Carmel come in, didn't you?—A. No, sir.

Q. You suggested to the board that they go ahead without determining, while Mr. Carney was there whether they would have the boards of Sunfield and Carmel, the election boards, come in, didn't you?—A. No, sir.

Q. You did not?—A. Yes, sir.

Q. Mr. Carney stated to you that you didn't have anything to say about that, and requested you to take down what he said, didn't he?—A. No, sir.

Q. Didn't he request you to take down what he said there before that board, and did you not take it down?—A. No, sir.

Q. Didn't you take down something of what Mr. Carney said before that board at that time?—A. No, sir; I can explain—

Q. You hold on; I didn't ask you to make any explanation, and I object to you stating anything except in answer to my questions.—A. I wish to say that I do not wish to be put in a false light by the question. I have answered the question, but it does not give me a chance to put in an explanation of it.

Q. Anyway what Mr. Carney said there before that board in your presence referred to the townships of Carmel and Sunfield?—A. Yes, sir.

Q. And he said that he wanted those two boards called in to show—he said to the board of county canvassers that he wanted the election boards of Sunfield called in to make their return to show that they took an adjournment before they completed their returns?—A. That was at another time you are talking about.

Q. He was before the board?—A. Yes, sir.

Q. Was he before the board more than once?—A. On more than one occasion on the same day.

Q. He was there and the board adjourned for dinner, and when it got in session again after dinner he was there again; is that correct?—A. Partially.

Q. In what respect isn't it correct?—A. He was there for awhile and went out and came back.

Q. Did he go out at the time the board adjourned for the noon recess?—A. Yes, sir.

Q. Then, he did go out when the board adjourned for recess and came back afterwards when it was in session in the afternoon?—A. He also went out before the board adjourned.

Q. Where did he go to?—A. I don't know.

Q. Did he go out of the office?—A. Yes, sir; to find some law which he didn't find and bring back.

Q. How do you know that he didn't find it?—A. He said he couldn't find it.

Q. He told that before the board?—A. Yes, sir.

Q. He told you what law he was looking for?—A. Some Michigan case.

Q. On what?—A. On the question he submitted to the board.

Q. Did he submit it to the board?—A. No, sir.

Q. He submitted no case to the board?—A. I don't recollect of his submitting any.

Q. You don't recollect that he had any cases to submit to the board?—A. Yes, sir. He may have referred to some cases—I don't know what.

Q. You don't remember that?—A. No, sir.

Q. You said that Robinson filed a protest, Samuel Robinson, didn't you?—A. Yes, sir; I said Sam Robinson did.

Q. Didn't I say Sam Robinson?—A. No, sir; you said Samuel.

Q. Was it not Samuel Robinson?—A. It is Sam Robinson.

Q. I call your attention to Exhibit 59. Haven't you put in there in the certificate copied Samuel Robinson?—A. That is right.

Q. Does it not say Samuel Robinson right there?—A. Yes, sir.

Q. What is the use of quibbling?—A. I like to hear you.

Q. I like to hear you; it is interesting, indeed. That report that Samuel Robinson presented there—or that petition, whatever you call it—of which you say this Exhibit 59 is a true copy, there was attached the affidavit of Rosslyn L. Sowers?—A. Yes, sir.

Q. The only thing that petition or request of Mr. Robinson's refers to was the township of Sunfield, was it not?—A. That is all that one refers to.

Q. You have come here and testified that that is a true copy, haven't you?—A. Yes, sir.

Q. Did he file any other petition?—A. Yes, sir.

Q. Where is that?—A. I don't know.

Q. Have you tried to find it?—A. Yes, sir.

Q. Have you tried to find the one of which this purports to be a true copy?—A. Yes, sir.

Q. Where did you look for it?—A. In the county clerk's office.

Q. Did you find it?—A. No, sir.

Q. You are the John C. Nichols who made the certificate to this certified copy of Exhibit 59?—A. The same fellow; yes, sir.

Q. Your name is John?—A. There is no question about that.

Q. I didn't know but you had some other name than John?—A. No, sir.

Q. Now, when was this request or petition of Samuel Robinson or Sam Robinson, as you put it, filed with the board of county canvassers?—A. I think on the morning of the 13th of November.

Q. 1912?—A. Yes, sir.

Q. When was the other request of Robinson filed with the board of county canvassers?—A. At the same time.

Q. Two of them were filed by Robinson at the same time?—A. Yes, sir.

Q. Why didn't you make a certified copy of the other one?—A. Maybe I did; I don't know.

Q. You can't remember that?—A. I don't remember that.

Q. You haven't any recollection now whether you did or not?—A. No, sir.

Q. Did you give a certified copy of the other request to Robinson or to any other person?—A. I don't know; I can tell when I see the copy whether I did or not.

Q. Did you remember before this was shown to you that you had given this certified copy, Exhibit 59, to anybody?—A. No, sir.

Q. You have forgotten that?—A. It had not been called to my attention.

Q. You had forgotten that?—A. I wouldn't say I had.

Q. But it had escaped your attention?—A. Yes, sir.

Q. I notice you say in that certificate here, certifying to this Exhibit 59, that "The foregoing is a true copy of the protest filed in my office and the whole thereof;" you say it is a true copy and the whole thereof?—A. Yes, sir.

Q. On what date was Mr. Carney there before the board of county canvassers?—A. I think the 13th of November.

Q. He was only there on one day?—A. That is my recollection.

Q. What did you do with the minutes of the proceedings that you took acting as clerk of the board of county canvassers?—A. They were attached to the statement.

Q. To whose statement?—A. The county canvassing board's statement.

Q. Mr. Carney asked you to sit down and take the objections that he made and requested you to do it when he was before the board of county canvassers, didn't he?—A. If you will divide that question up a little bit I will answer it; I can't answer it altogether in the form it is in.

Q. Why can't you answer it in the form it is?—A. If I answered it part of it would be true and part not true to the rest of it.

Q. Did Mr. Carney request you while before the board of county canvassers to take down his objections?—A. Not in that language.

Q. Or that in substance?—A. Yes, sir.

Q. Did you sit down and write out his objections, or any part of them, on two sheets of paper there, write it down in ink? Why do you hesitate?—A. I am thinking.

Q. You said a while ago you didn't do it, why do you hesitate?—A. I am not thinking now on that proposition; you have added a little more to it.

Q. I will give you time.—A. Of course you will, I will take it anyway. Now, Mr. Carney asked to have——

Q. (Interrupting.) Wait a minute——

Mr. FRANKHAUSER. We think he has a right to explain his answers.

Mr. ADAMS. He has no right to explain any answers to my questions; if he can't answer my questions he can say so.

Mr. FELLOWS. He should answer in his own way. I don't think it is within the province of counsel when a witness starts to answer a question to insist that that answer is not responsive. If counsel thinks the answer is not responsive he should move to strike it out. The witness has the inherent right to answer the question as in his judgment the facts require, then if counsel is not satisfied he can move to strike it out. That is my understanding of the rights of the witness.

Q. You said a while ago you didn't do it; why do you hesitate? Answer that yes or no, or say you can't answer it. The facts are stated in the question.

Mr. FELLOWS. I submit if the witness did write down the statements and it was not on two sheets of paper, the answer might be good as to part of it and not as to the rest. The witness has the right to state the facts as they occurred.

Mr. ADAMS. If he can't answer the question because it is complex he can say so.

A. Mr. Carney and I sat there and formulated what he wanted; I don't know whether I used a pen or pencil, and it was written up on a typewriter afterwards.

Q. Where are the minutes you took?—A. I presume they were destroyed; I don't know about that; we wrote it off on the typewriter.

Q. You destroyed them?—A. I presume so.

Q. Why didn't you keep them?—A. I didn't deem it necessary.

Q. Didn't you, as clerk of the county of Eaton, when you were acting in any capacity as clerk in keeping a record of the proceedings of any kind of a board, keep the minutes you took of those proceedings, from which you made up your final records?—A. I didn't always keep them; no.

Q. You did in a great many instances, didn't you?—A. Sometimes.

Q. Do you know whether you destroyed those minutes you took down that Mr. Carney requested you to take down at that time or whether you did not?—A. No, sir; I do not know it positively, but I think I did. When it was copied off on the typewriter we were through with it.

Q. Have you looked or requested the county clerk to make search for that paper?—A. No, sir.

Q. I wish you would before the next meeting of this commission. You had written down on this something that Mr. Carney requested you to write down there, or attempted to write down the whole or part of what he requested you to write down, didn't you, while it was before the board?—A. We agreed what the minutes should show.

Q. I didn't ask you that, and I move to strike it out.

WITNESS. That is my answer to that question.

Last question read.

Q. Will you answer that question?—A. I have answered the question.

Q. You refuse to make any further answer?—A. I have answered it sufficiently, I think.

Q. That is the only answer you will make to it?—A. That is the only one I think is competent.

Q. All right, it may stand on the record that way. Did you enter on the record then the requests that Mr. Robinson filed there did you—on the proceedings of the board of county canvassers I mean?—A. Not in full.

Q. You entered on there that those protests were filed?—A. I entered the fact that they were filed.

Q. You now think that the protests that Samuel Robinson, or Sam Robinson, filed there were entered upon the records of the proceedings of the board of county canvassers?—A. Yes, sir.

Q. I will call your attention to it. I will ask you first if it is not a fact that Sam Robinson presented two petitions to the board of county canvassers—one of them in regard to the township of Sunfield and one in regard to the township of Carmel?—A. I have answered that.

Q. Is that true?—A. Yes, sir.

Q. Those were the only protests that Sam Robinson filed before the board of county canvassers?—A. Yes, sir.

Q. The records show that?—A. There is no question about it.

Q. Then he didn't file any protests about any of the other towns in the county of Eaton, did he?—A. I didn't say he did.

Q. He didn't, did he?—A. I didn't say he did.

Q. He didn't, did he?—A. No, sir.

Q. You stated that two of the members of the board of county canvassers were Democrats?—A. I said that that was their reputation; I don't know it.

Q. You don't know it?—A. No, sir.

Q. I understood you to say here in answer to my Brother Frankhauser that two members of that board were Democrats; you don't mean to be understood that way now, do you?—A. I mean to be understood that is their reputation; I don't know it.

Q. You don't know it?—A. No, sir.

Q. You are qualifying your former answer to that extent?—A. I never have made any different answer than that.

Q. You don't know whether two of the members of that board of county canvassers were enrolled prior to November 5, 1912, election as Democrats, do you, of your own knowledge?—A. No, sir.

Q. You don't know of your own knowledge whether they voted as Democrats at the November 5, 1912, election, do you?—A. No, sir; I do not.

Q. I suppose before you got the returns from the various election boards of that election, in controversy in this case, of the November 5, 1912, election, that you were receiving from people outside of the returns—the official returns—the result of the election in the various precincts in the county of Eaton, didn't you?—A. Who from?

Q. I don't care who from; I asked you whether you received them?—A. I will have to answer the question no.

Q. Did you receive any of the returns from any of the townships or wards or any of the villages or cities in the county of Eaton before you opened any of these returns?—A. No, sir.

Q. Didn't you get any telephone messages on the night of the November 5, 1912, election from any of the voting precincts—election precincts—in the county of Eaton?—A. No, sir; I did not.

Q. You heard that, didn't you, that they were received here somewhere in the city of Charlotte?—A. I presume they were received.

Q. You heard of that, didn't you?—A. I heard of their being received.

Q. Didn't you make out any list of those and keep tab on them?—A. No, sir.

Q. To find out what the result of the election was?—A. No, sir.

Q. Did you have a Republican headquarters or any place in the city of Charlotte where they were getting the election returns from the several precincts in the county of Eaton of the November 5, 1912, election after the close of the polls?—A. There was such a place.

Q. Did you go there?—A. Yes, sir.

Q. You got some election returns from the several precincts in the county of Eaton at your office that day, didn't you?—A. I did not.

Q. You hadn't found out how any of the townships had gone up to the time you retired on the night of November 5, 1912—of the precincts, I mean—in the county of Eaton or any of them? I don't mean official returns; I mean information of how those precincts had gone.—A. I had some information.

Q. Some of those returns were brought into the county clerk's office, were they not? They were carried in?—A. Yes, sir.

Q. You were in the office assuming to act as county clerk at that time?—A. On the 6th day of November?

Q. Didn't you take possession of the office until the 6th day of November?—A. That just shows how you are trying to twist things.

Mr. ADAMS. I take an exception to that remark.

WITNESS. Just keep straight.

Q. I will try and keep my questions as straight as I want to put them; I will try and put them fairly to you if you will give fair answers.—A. But you don't allow me to give fair answers.

Q. You answer my question, and not something else. Didn't you take possession of the office until the 6th day of November?—A. Yes, sir; I did; but that twist is not fair.

Q. You first took possession of the county clerk's office on November 6, 1912?—A. No, sir.

Q. I mean now after Mr. Pray claimed to leave the office?—A. November 5?

Q. Did you take possession as county clerk of the office, records, and files, and everything pertaining to the county clerk's office on November 5, 1912?—A. I was in possession of them; yes, sir.

Q. Was Mr. Pray in possession of them, too?—A. I don't think he was. His resignation took effect on the 4th.

Q. Who was in charge of the office as county clerk of Eaton County on November 5, 1912?—A. I was.

Q. Were you in the sole possession of it?—A. Yes, sir.

Q. Was Mr. Pray in possession of it?—A. No.

Q. Was he there?—A. Yes, sir.

Q. Did he perform any of the duties of county clerk November 5, 1912?—A. No, sir; I think not.

Q. Now, did he perform any of the duties of county clerk after November 5, 1912?—A. He did some work for me.

Q. What work did he do for you?—A. He looked after some things in the office.

Q. What time November 5, 1912, do you claim you took sole control of the office and the paraphernalia and records and files of the county clerk's office?—A. In the morning.

Q. What time?—A. I don't know.

Q. Was Mr. Pray there when you got there?—A. I think so, or shortly after anyway.

Q. Did you hear Mr. Pray telephone to Hillsdale at any time on or after the 5th of November with reference to some election returns? Were you in the office when that occurred—in the county clerk's office, I mean?—A. Well, I couldn't say he telephoned, but somebody did from the office.

Q. Didn't he telephone or answer the telephone and hold a telephonic communication with somebody at Hillsdale?—A. He may have; I don't know.

Q. Don't you recollect it?—A. I do not; no.

Q. Did you hear him state over the telephone that he was the county clerk?—A. No, sir; I did not, and I don't think he would say so.

Q. I am asking you whether that occurred; I didn't ask you what he would say, and I move to strike that part of the answer out. I am asking you whether you heard something. You can answer that; Mr. Pray can take care of himself.—A. I hope he can.

Q. You didn't hear any such conversation?—A. No, sir; I don't recall it.

Q. I show you a paper which purports to have been filed in the county of Eaton November 21, 1912, entitled on the back of it "Resignation of E. G. Pray as county clerk." and is file marked "Filed November 4, 1912, Ernest G. Pray, county clerk." When did you first find out that that paper was

filed?—A. Well, I knew that was filed there; I don't know when I first found it out.

Q. It was not made public, as far as you know, was it?—A. I don't know as anybody came to inquire about it.

Mr. ADAMS. I move to strike the answer out.

Q. It was not made public, as far as you know, was it?—A. It was put on file in the county clerk's office as part of the records, and the public could see it any time they wanted to.

Q. It was not published around the city of Charlotte or elsewhere that you know of, was it?—A. It was not put in any of the papers, I think; I don't know that it was.

Q. In other words, this paper I am calling your attention to reads as follows: "State of Michigan, county of Eaton, ss. I hereby resign the office of county clerk and register in chancery and all the emoluments thereof. This resignation to take effect November 4, 1912. To the Honorable Clement Smith, circuit judge of the fifth judicial circuit, at Charlotte, Mich., October 30, 1912. Ernest G. Pray." That is Mr. Pray's signature?—A. Yes, sir.

Q. Now, then, you didn't hear, outside of yourself and Mr. Pray and the deputy, possibly, in the office of the county clerk—you didn't hear anybody say anything about Mr. Pray having resigned, did you, until after election day, November 5, 1912?—A. Oh, yes; I heard it; I will not tell who it was; I don't know.

Q. You heard it outside of you three people?—A. Yes, sir.

Q. And the circuit judge?—A. Yes, sir; I think the judge of probate knew it.

Q. Are there any others?—A. My recollection is it was filed with the judge of probate and the county treasurer, possibly.

Q. You and Mr. Pray intended to keep that thing quiet, and if Mr. Pray was not elected that thing would not be enforced?—A. No, sir; that is not true; not a word of it.

Q. When was the order, in fact, made, if you know of your own knowledge, appointing you as county clerk to fill a vacancy occasioned by the resignation of E. G. Pray?—A. It was made either the 4th or some time prior to that; I don't know just when Judge Smith made it.

Q. Were you present when the order was made?—A. No, sir.

Q. When did you first read the order?—A. The afternoon of the 4th.

Q. Where did you see it?—A. In the county clerk's office.

Q. Who showed it to you?—A. I don't know.

Q. Was Judge Smith here on the 4th of November, 1912?—A. I don't know.

Q. The circuit court of this county was not in session November 4, 1912?—A. No, sir.

Q. I show you a book marked "Circuit Court Journal I, Eaton County," is that a journal of the proceedings of the circuit court of Eaton County?—A. Yes, sir.

Q. One of the records in the office of the county clerk of Eaton County?—A. Yes, sir.

Q. On November 6, 1912, on page 191 of this record is an entry that is signed by John C. Nichols, county clerk?—A. Yes, sir.

Q. Is that your signature?—A. Yes, sir.

Q. You made that entry?—A. Yes, sir.

Q. That entry is dated November 6, 1912?—A. Yes, sir.

Q. "This being the date to which the circuit court for the county of Eaton was adjourned and no circuit judge appearing to hold the same, Hon. Clement Smith having given his order, thereupon the court was adjourned to Thursday morning, November 7, 1912. John C. Nichols, county clerk." That is the proper entry as I read it?—A. Yes, sir.

Q. Now, the entry next preceding that is an entry on the record on the sixth day of the session, Monday, October 28, 1912, contained on that same page, 191, isn't it?—A. Yes, sir.

Q. That shows that the circuit court was in session October 28, 1912?—A. Yes, sir.

Q. That record shows that court adjourned—this record shows, on page 191, that on Monday, October 28, 1912, the circuit court of Eaton County adjourned until Wednesday, November 6, at 9 o'clock in the morning, 1912; Clement S. Smith, judge. Is that correct?—A. Yes, sir.

Q. There was no court, then, between—no circuit court—between Monday, October 28, 1912, and Thursday, November 7, 1912?—A. No court between those dates.

Q. Judge Clement Smith during the whole of November, 1912, and for several years before that time resided in Hastings, Barry County, Mich., hadn't he?—A. Yes, sir.

Q. E. G. Pray was a candidate on the Republican ticket at the November 5, 1912, election for the office of representative in the State legislature of Michigan from the sixth district, in which the city of Charlotte is located, was he not?—A. Yes, sir.

Q. And you were a candidate on the Republican ticket in the county of Eaton for the office of circuit court commissioner at the November 5, 1912, election?—A. Yes, sir.

Q. Did you say that Congressman Smith was not in the county clerk's office at any time between the morning of November 6, 1912, and the morning of November 8, 1912, when you were there?—A. I do.

Q. You say he was not there?—A. I say he was not; not when I was there.

Q. You were not there, I take it, all the time covering that period of time I inquired about in my last question, were you, when the office was open?—A. I think I was practically all the time.

Q. Were you there all the time?—A. I was in the office and about the building all the time during the day, both of those days.

Q. Mr. Davis, of Battle Creek, was in the office during that period of time I last referred to—John C. Davis?—A. I don't know.

Q. You know who I mean by John C. Davis?—A. Yes, sir.

Q. Do you know Congressman Smith's son?—A. William? Yes, sir.

Q. Was he in the office of the county clerk during the period of time I last referred to while you were there—on the 6th and 7th up to the morning of the 8th?—A. I don't know.

Q. When did you first see Congressman Smith in the county clerk's office of Eaton County after the close of the polls November 5, 1912?—A. I couldn't answer that; I don't know.

Q. You don't know?—A. No, sir.

Q. You knew him very well?—A. Yes, sir.

Q. You have been a Republican for a great many years, have you not?—A. Yes, sir.

Q. You have been very active in Republican work in this county for a great many years?—A. I will leave that for others to judge; I don't know how active.

Q. I will let you put your construction upon it; that is what I am asking for at this time, not somebody's else.—A. Slightly interested.

Q. You were just slightly interested?—A. Yes, sir.

Q. No more than slightly?—A. I have not been as active as a great many others. I put it upon that basis. I have been slightly interested.

Q. You consider, don't you, that you have been quite active?—A. No, sir.

Q. You were interested in 1912 in the Republican contest?—A. I think so.

Q. You were quite interested in the result of that election, not for Mr. Smith but for others on the Republican ticket?—A. Yes, sir.

Q. And you took quite an active part in the campaign of Mr. Smith for Congress during the last campaign in the result of the election on November 5, 1912?—A. No, sir.

Q. What did you do?—A. I didn't do anything.

Q. Nothing at all?—A. No, sir.

Q. You didn't talk in his interest in and around Charlotte, did you?—A. No, sir.

Q. Why didn't you?—A. It was not necessary.

Q. Was that the only reason?—A. Yes, sir.

Q. You didn't take any interest in the final result of the election of Mr. Smith either, did you?—A. No, sir; I went home and went to bed at 9 o'clock.

Q. You were pretty tired that day—on that November 5—and thought if you could get a good sleep it would quiet your nerves, etc. Did you do anything yourself in the interest of Mr. Smith?—A. No, sir.

Q. You went out into Sunfield and got some affidavits, didn't you?—A. Yes, sir.

Q. Where are they?—A. I don't know.

Q. What did you do with them?—A. I think I gave them to Mr. Smith.

Q. You wrote the affidavits out, didn't you?—A. Yes, sir.

Q. Of whom did you get affidavits?—A. Personally, I got affidavits from Mr. Mapes; I can't tell you his given name—Harry Mapes, and I think the other fellow's name was Hunter.

Q. Huber?—A. No, sir.

- Q. Dennis A. Hager?—A. Hager—yes; that is the man.
- Q. Dennis A. Hager, is that right, of Sunfield?—A. I think so.
- Q. Harry H. Mapes, of Sunfield?—A. Yes, sir.
- Q. What others?—A. That is all.
- Q. Did you make two affidavits and have them signed, or one affidavit?—A. I will not be sure about that.
- Q. When did you give them to Congressman Smith?—A. Soon after getting them.
- Q. When was that signed?—A. It might have been the next day after that or a day or two; I don't know.
- Q. It was within two or three days?—A. Yes, sir.
- Q. When did you procure the affidavits?—A. I don't know.
- Q. How soon after the November 5, 1912, election?—A. Oh, I couldn't say without looking it up.
- Q. Did you get affidavits from any others in the interest of Mr. Smith?—A. No, sir; I did not.
- Q. Did you write up any affidavits for anybody else in the interest of Mr. Smith?—A. I did.
- Q. Where did you write them?—A. At the village of Sunfield.
- Q. Who did you write up the other affidivits for at the village of Sunfield?—A. D. W. Knapp.
- Q. Any others?—A. No, sir.
- Q. You didn't find Knapp there, possibly, when you were there?—A. No, sir; I did not.
- Q. Did you go to see Mr. Slater?—A. No, sir.
- Q. Z. D. Slater?—A. No, sir.
- Q. Did you go and see J. H. Bera when you were out there?—A. I didn't go to see him, but I did see him.
- Q. Did you, when you got out there, go so far as to see Bera? You did not go to Sunfield to see him, but when you once got to Sunfield, then did you go to see Bera?—A. No, sir; but I saw him.
- Q. You met him without trying to find him?—A. I went down to see Mr. Mapes—I had some business there—and it was no trouble to see Mr. Bera.
- Q. You saw J. H. Bera, did you?—A. Yes, sir.
- Q. He was postmaster there?—A. Yes, sir.
- Q. You talked with him about these affidavits?—A. Yes, sir.
- Q. He advised you who to see?—A. No, sir.
- Q. He advised with you about seeing them?—A. No, sir.
- Q. Didn't you talk over the political situation at Sunfield with Bera?—A. Yes, sir.
- Q. Did you have any affidavit when you were there to Mr. Bera's place?—A. I drew the affidavits while I was there in the furniture room of Mr. Bera's. I don't know whether Mr. Bera or Mr. Mapes runs it; they were together.
- Q. Did Mr. Bera go with you to see any of these men?—A. No, sir.
- Q. Did you bring any of them into Mr. Bera's office?—A. Mr. Hager came in while I was there.
- Q. You took Mr. Hager's affidavit there?—A. Yes, sir.
- Q. And had him sign and swear to it?—A. Yes, sir; it was signed and sworn to there. I will not say it was signed and sworn to there; it was in the furniture store; I don't know whether Mr. Bera is interested in the furniture store or not.
- Q. He was there when Mr. Hager signed the affidavit?—A. He was not; no, sir.
- Q. Where was he?—A. In the post office.
- Q. Where is the post office?—A. Adjoining the furniture store.
- Q. It is in the furniture store?—A. I don't understand it that way.
- Q. I am asking you whether it is?—A. I don't know.
- Q. Is it in the same room, partitioned off?—A. Now, really, I don't know; I think not; though my recollection is that there are two front doors—you go in the post office in one and the furniture part in another; whether they have the furniture around back of the post office I don't know.
- Q. You were in the furniture store?—A. Yes, sir.
- Q. That is where you saw Mr. Bera?—A. No, sir.
- Q. Where did you see him?—A. At the post office.
- Q. In the post office?—A. Yes, sir; there is a door between them.

Q. Was Mr. Bera there when Mr. Hager was there with you; I mean was he in the room where you were at the time when Mr. Hager was there?—A. I don't know; I don't recollect that now.

Q. Who had administered the oath to Mr. Hager?—A. I don't know.

Q. Was he sworn? Do you know whether he was or not?—A. Yes, sir.

Q. Did you administer the oath?—A. I think I was not a notary public at that time.

Q. You were county clerk?—A. I didn't administer it as county clerk, I am sure.

Q. You had a right to administer an oath as county clerk, didn't you?—A. I might under some circumstances.

Q. Didn't you consider you had a right to do that there that day?—A. I did not.

Q. What do you mean; you didn't consider you had or didn't do it?—A. Both.

Q. Was the only place you got affidavits from?—A. Yes, sir.

Q. Did you make a second trip?—A. (Interrupting.) Wait a minute. Those are the only ones I got affidavits from.

Q. Did you prepare affidavits for some others?—A. Yes, sir.

Q. For whom?—A. For D. W. Knapp.

Q. You stated that?—A. Yes, sir.

Q. I mean any others besides those you have mentioned?—A. Well, now, whether I presented the affidavit that Mr. Hager and Mr. Mapes signed to J. H. Palmer for his signature or a separate one I couldn't tell you.

Mr. ADAMS. Will you gentlemen produce those affidavits?

Mr. FRANKHAUSER. Yes, sir.

Q. Did you go out to the township of Carmel?—A. No, sir; I did not.

Q. Did you go anywhere else in the interest of John M. C. Smith?—A. No, sir.

Q. Except Sunfield?—A. No, sir.

Q. You were a very intimate friend of Congressman Smith?—A. I have known him for a great many years.

Q. The question is, whether you are an intimate friend of his; you consider yourself so?—A. Yes, sir.

Q. You consider him an intimate friend of yours?—A. Yes, sir.

Q. And was prior to November 5, 1912?—A. Yes, sir.

Q. You have been rather closely associated in politics, haven't you—in political affairs?—A. We have both belonged to the same party for a great many years.

Q. You have been rather closely associated in politics—in political affairs—with Congressman Smith prior to the November 5, 1912, election, and on that day?—A. We have been associated together in the Republican Party for a good many years.

Q. You have worked together?—A. Yes, sir.

Q. In campaigns?—A. Yes, sir.

Q. What did you do with the Knapp affidavit—D. W. Knapp—if you made one, did you ever see it?—A. I saw it when I prepared it; I have forgotten whether I brought it home or whether I left it there; I think I left it there in Sunfield for him to swear to.

Mr. FRANKHAUSER. We have never seen any D. W. Knapp affidavit.

Q. You got from Dennis A. Hager and Harry H. Mapes an affidavit of what you wanted them to sign, didn't you?—A. In the form the question is, I will answer no. I got from them an affidavit of what they claimed the facts were.

Q. When did you write up this affidavit?—A. The day it is dated.

Q. Where?—A. In the village of Sunfield.

Q. Whose typewriter did you use?—A. I don't know that, but it was a typewriter I found in the back end of the furniture store.

Q. Did you write it out?—A. Yes, sir.

Q. Do you work a typewriter?—A. Yes, sir.

Q. Had you seen Mr. Mapes or Mr. Hager up to that time—either of them?—A. I had seen Mr. Mapes.

Q. Prior to the time you wrote this?—A. Yes, sir; I am pretty certain I was there and saw Mr. Hager.

Q. Where did you get the information from that you put in the affidavit?—A. From Mr. Mapes.

Q. Harry Mapes, he was the township clerk of Sunfield Township?—A. Yes, sir.

Q. At that time?—A. Yes, sir.

Q. And was on election day, November 5, 1912?—A. Yes, sir.

Q. You didn't see Mr. Knapp that day, did you?—A. No, sir.

Q. I suppose you prepared an affidavit just like this Exhibit 60 for D. W. Knapp to sign, didn't you?—A. A similar one.

Q. Did you make more than one copy at the time?—A. I think I did.

Q. How many did you make at the time? How many did you make at the time you made that one there, Exhibit 60?—A. Well, I think I made two copies at that time; I think that is all I made, but I am not certain about it; I may have made three.

Q. You made one of those you made there at that time for D. W. Knapp to sign, didn't you?—A. If you have reference to the carbon copy, I couldn't say; I don't know whether a carbon copy of this or not.

Q. Did you use that typewriter there that day at Sunfield more than one time in making one affidavit or copies at the same time?

Mr. FRANKHAUSER. I object to the cross-examination as having no bearing on the issue here.

A. I could tell if I saw the affidavit of Mr. Knapp; I couldn't tell you.

Q. Your recollection is not good?—A. It is not as to that; I know I made two copies; whether when I could not find Mr. Knapp I went back and prepared one separately for him, I couldn't say.

Q. As a matter of fact, did you leave any copy of that affidavit there, No. 60, with Mr. Hager or Mr. Mapes?—A. If the affidavit that Mr. Knapp signed is a copy of this one, I left it with Mr. Mapes.

Q. You were there when Mr. Hager and Mr. Mapes signed that Exhibit 60?—A. Yes, sir.

Q. Did you give either Mr. Hager or Mr. Mapes, or both of them, a copy of the affidavit that they signed there, Exhibit 60?—A. Do you mean for them personally?

Q. Yes, sir.—A. No, sir.

Q. Is it not a fact that the only affidavit you made there that day you made on a typewriter and you made them all at the same time on that typewriter that you made that Exhibit 60, this one being Exhibit 60 being the ribbon copy and the others you made of this, you made carbon copies of this Exhibit 60?—A. As I told you before, I think I made this one ribbon copy and one carbon copy, then whether when I could not find Mr. Knapp I prepared another one, I couldn't say, unless I saw it.

Q. I suppose they told you there before you drew that affidavit that the Sunfield election board adjourned at noon, didn't they?—A. I don't know whether they did or not; I don't recall whether they told me that or not; I knew of the fact.

Q. I suppose they told you that Mr. Palmer went away and left the board that night without the count being completed of the ballots that were cast there in that precinct at that election?—A. Yes, sir.

Q. I suppose they told you that before you drew that affidavit, Exhibit 60, that they adjourned entirely and wholly the proceedings of the election board somewhere about 2 o'clock in the morning, or 1 o'clock in the morning rather, of November 6, 1912?—A. Well, I didn't understand it that way.

Q. You didn't understand it that way?—A. No, sir.

Q. Did Mr. Mapes tell you that?—A. I don't think he did.

Q. Before you drew that Exhibit 60?—A. I didn't understand it that way.

Q. Did you know that from any source before you drew that Exhibit 60?—A. No, sir.

Q. Didn't you know before you left Charlotte and went out there that was the fact about that matter?—A. No, sir.

Q. Hadn't you talked that over, you and Attorney McPeck?—A. No, sir.

Q. Were you not advised before you went to Sunfield to get that affidavit from those members of the election board out there; had not Mr. McPeck advised you that the board came back there and made a count of those ballots on the morning of November 6, after the board had adjourned and gone to the barber shop?—A. I don't recollect any talk with McPeck about it at all.

Q. Hadn't you that information from some source before you went to Sunfield to get that affidavit?—A. Democrats were repeating that around here.

Q. You had heard it?—A. Yes, sir.

Q. So when you went out to see Mr. Mapes and Mr. Hager you had information that the election board of Sunfield had, as a matter of fact, or as claimed by the Democrats even, that it had adjourned about 12 or 1 o'clock on the

morning of November 6, 1912, and stopped counting the ballots there?—A. That is what the Democrats claimed.

Q. You knew they were claiming that when you went out to get that affidavit, didn't you?—A. I had heard of it.

Q. I suppose you read that protest of Sam Robinson, didn't you, which was filed with the board of county canvassers before you went out to the township of Sunfield to get that affidavit Exhibit 60?—A. Yes, sir.

Q. You read the affidavit of Mr. Sowers that was attached to that protest of Sam Robinson, prior to the time you went out to Sunfield to get that affidavit, didn't you, Exhibit 60?—A. Yes, sir.

Q. And you noticed in that affidavit, Exhibit 59, which has been offered in evidence here by counsel on the other side, to which you certify that it is a true copy of Mr. Sowers's affidavit before the board of county canvassers, reciting "That the inspectors of said election in said township did not immediately proceed to and count the votes cast at said election and determine the result thereof as required by law, but that said inspectors after commencing the count of the ballots so cast at such election thereupon adjourned until 7 o'clock in the forenoon of the next day, and thereafter reconvened said board of election inspectors at 2 o'clock in the forenoon or morning, and proceeded to the counting of the ballots so cast at said election, and concluded said counting at 6 o'clock in the morning, and before the time fixed for the reconvening of said board of election inspectors as announced at the time of the adjournment so made." You had read that before you went out to the township of Sunfield?—A. Yes, sir.

Q. Then, in the face of all that, you drew that Exhibit 60 out there?—A. Yes, sir.

Q. And had those men sign it, Mr. Hager and Mr. Mapes?—A. They signed it.

Q. You drew a like affidavit for D. W. Knapp to sign, didn't you, of like tenor?—A. Yes, sir.

Q. Reciting in substance the very same facts that you recited in Exhibit 60?—A. Yes, sir.

Q. And no other facts than those you recited in Exhibit 60?—A. I don't know.

Q. Did you ever see that affidavit of Mr. Knapp's?—A. I drew it.

Q. Did you see it after it had been signed by him?—A. Yes, sir.

Q. Where did you see it?—A. In the city.

Q. Where in the city?—A. I think in my office.

Q. Was it delivered to you?—A. It was.

Q. What did you do with it?—A. Well, I suppose I took it to Mr. Smith; if I didn't, I have got it.

Q. I wish you would look for it and see whether you have it; and, if you have, produce it here at the next time to which this commission adjourns today?—A. All right.

Mr. ADAMS. I will read Exhibit 60 in evidence:

"STATE OF MICHIGAN, *County of Eaton*, ss:

"D. A. Hager and Harry Mapes, being duly sworn, deposes and says that they reside in the township of Sunfield, Eaton County, and State of Michigan; that at the general election held in said township on the 5th day of November, A. D. 1912, J. H. Palmer, D. A. Hager, and F. H. Bacon acted as inspectors of said election, and that Harry Mapes and D. W. Knapp acted as clerks of said election; that immediately upon the closing of the polls of said election said board of election inspectors proceeded to canvass the votes cast at said election, according to law; that about the hour of 1 o'clock in the morning of the 6th of November said J. H. Palmer went home and did not return to finish the canvass until said canvass was nearly completed; that the canvassing of said ballots was done in public; that during the entire time of counting said ballots the public might have been present if they so desired, but as to whether at all times during said count there were others present besides said board they are unable to state; that they deny that they had any knowledge of any report that John M. C. Smith had lost the election to Congress by a small majority or otherwise; that the other members of said board were not absent from said polling and canvassing place to exceed 30 minutes; that they had a talk about adjourning the count because of the lateness of the hour, but that they received information from the prosecuting attorney of said county that they should proceed with the count until it was completed. These deponents further say that

the result of said canvass was read aloud that any persons who happened to be present might know the result.

"D. A. HAGER.
"HARRY MAPES.

"Subscribed and sworn to before me this 16th day of November, A. D. 1912.

"DAVID G. WEIPPERT, *Notary Public*.

"My commission expires February 3, 1916."

There is impressed on that exhibit a seal, as follows: "David G. Weippert, notary public, Eaton County, Mich."

Q. I suppose you entered upon the minutes of the board of county canvassers the substance at least of what occurred when Mr. Carney was there on the occasion you mention, didn't you?—A. I put down what was required.

Mr. ADAMS. I move to strike out the answer.

Q. Will you please answer my question?—A. I can't answer your question.

Q. You made an entry, didn't you, on this Exhibit 6, a canvass of the votes cast at the general election, which is a record from the office of the county clerk of Eaton County, what occurred when Mr. Carney was before that board, did you?—A. Let me see it and I will tell you.

Q. Do you remember whether you did, without looking?—A. I don't know what you have got; I couldn't tell you. If you will let me see what you have got, I will tell you.

Q. You looked at that, didn't you, the last page of Exhibit 6; you looked at it to-day before you went on the witness stand?—A. Yes, sir.

Q. That is the page I am referring to. I ask you whether you made that record with a typewriter?—A. I don't know whether I did personally or not.

Q. If you didn't do it personally, you caused it to be done?—A. Yes, sir.

Q. That is right, isn't it?—A. Yes, sir.

Q. It shows in substance what occurred there when Mr. Carney was there before that board of county canvassers, does it not, this last page of Exhibit 6?—A. Yes, sir; but it does not show all that occurred there.

Q. It shows the substance?—A. No, sir; it doesn't show the substance of what occurred there.

Q. Well, it shows the substance, does it not, of what he wanted that board to do at that time?—A. Yes, sir.

Q. Is it not a fact that Mr. Carney requested the board to summon the inspectors of election of the township of Sunfield for the purpose of correcting and completing the returns of said township, and likewise to summon the board of Carmel Township for the purpose of showing whether a part of the count was made before the hour of 5 o'clock, while the voting was in progress in said township?

Mr. FRANKHAUSER. I will object; Judge Adams has read from the exhibit, and that will show for itself what it is.

Mr. ADAMS. I didn't say anything about Exhibit 6; I asked him whether that or not was correct.

Mr. FRANKHAUSER. The record didn't show you were reading from Exhibit 6 until I stated it.

Q. Answer the question.—A. Have you finished your question?

Q. Can you answer that question?—A. Yes, sir.

Q. Answer it.—A. Yes, sir.

Q. And you, in the face of that request of Mr. Carney, advised the board of county canvassers not to send out for those boards of Sunfield and Carmel Townships to come in in accordance with the request of Mr. Carney, didn't you?—A. No, sir; I did not.

Q. You suggested that?—A. No, sir; that was not a suggestion.

Q. It was not?—A. No, sir.

Q. You didn't want the board of Sunfield to come in at that time before the board of county canvassers, did you?—A. Not at that time; no.

Q. You didn't want the board of Carmel Township to come in before the board of county canvassers at that time, did you?—A. Not at that time.

Q. Referring again to—I am not sure whether I asked you or not—I ask you now whether the other petition of Sam Robinson filed with the board of county canvassers, the protest of which Exhibit 59 is a certified copy, was filed—that is, the other one—was not substantially the same as this certified

copy of the protest, except that the other one referred to the township of Carmel only? What did the other one refer to, to what particular election precinct—the other one that Robinson filed?—A. It referred to the township of Carmel.

Q. Did you say you had looked for that other protest of Sam Robinson's?—A. I said I looked for the protest.

Q. Did you look for that other protest that Sam Robinson filed?—A. I looked for both of them.

Q. They were both filed with you while you claimed to have been county clerk?—A. Yes, sir.

Q. They both now are missing, you say—the originals?—A. I didn't say so.

Q. You can't find them?—A. I didn't find them.

Q. You have had the county clerk, Mr. Ford, make a search for you for them?—A. No, sir; I have not.

Q. Will you have him make a search for them and endeavor to find them?—A. You can find them; I don't care to find them particularly.

Q. Will you find them?—A. I don't know whether I will or not; I will look for them.

Q. You didn't make a certified copy of the other one, did you?—A. I think I did, but I don't know.

Q. Was the clerk's office in the county of Eaton wholly upon a salary basis beginning as early as November 1, 1912?—A. No, sir.

Q. Was it upon the fee system?—A. No.

Q. Partly salary and partly fees?—A. Yes, sir.

Q. During the time that you were county clerk after Mr. Pray's alleged resignation, were any part of the fees of that office belonging to the county of Eaton?—A. I think there must have been some; I don't know how much.

Q. Did any part of the fees for certified copies such as Exhibit 59, at the time this Exhibit 59 was made, belong to the county of Eaton?—A. No, sir.

Q. You didn't make any minute of your items of business done of any certified copies such as Exhibit 59 having been made by your in that office on the 7th day of December, 1912, did you?—A. I don't know.

Q. Did you make any charge for this certified copy of Exhibit 59?—A. I imagine it was paid for.

Q. Did you make a charge for it?—A. I did not on the book

Q. You made a charge for it, did you?—A. I think I have answered it.

Q. Are you sure about it or do you think so?

(No answer.)

Q. Did you make any charge for it, for making a certified copy of Exhibit 59, whether you put it on the book or did not?—A. I received pay for it.

Q. At whose request did you get up this certified copy?—A. Mr. Smith's.

Q. Did he ask you to make him a certified copy of the other protest that Sam Robinson filed with the board of county canvassers?—A. I think he did, but I am not sure about that; I think I made a certified copy; I don't carry the details right along every day.

Q. You say that you did not enter any fees that you received, if you received any, for making this Exhibit 59 on any books or records, or any memorandum of a fee received if you received one?—A. I didn't say so.

Q. Is your recollection you did or did not, on anything that is in the county clerk's office, or that you left there or had there, at the time you made this certified copy of Exhibit 59?—A. I didn't make any charge for it in any book.

Q. Now, I understood you to say that you were a justice of the peace in 1894 and 1895; is that correct?—A. I think that is correct.

Q. You were a justice of the peace, during those years at least, in what locality?—A. Charlotte.

Q. For the city of Charlotte?—A. Yes, sir.

Q. There were other justices of the peace at the same time, or another one. How many did they have at the same time—three justices of the peace in 1894 and 1895?—A. The city was entitled to four.

Q. Do you know whether you had four at that time or not?—A. I couldn't recall.

Q. I suppose you presented your bills for services as justice of the peace that you performed for the public to the board of supervisors of Eaton County, didn't you?—A. Yes, sir.

Q. You presented a bill some time in 1894 or 1895, didn't you, for certain fees that the board of supervisors took exception to?—A. Yes, sir.

Q. The matter was finally brought up in the board of supervisors and a resolution offered in regard to it, was there not?—A. I am not aware of it.

Q. I show you a file package No. 302, entitled "Clerk's office, county of Eaton, resolutions January session, 1895."—A. Yes, sir.

Q. These have been produced here by Mr. Ford, the county clerk. What do you say as to whether these are files in the office of the county clerk of Eaton County, Mich.?—A. That package is.

Q. Look at the files; I call your attention to that one with a green wrapper on it?—A. Yes, sir.

Q. Now, is not that a file from the office of the county clerk of Eaton County?—A. Yes, sir.

Q. Package No. 302, clerk's office of the county of Eaton?—A. Yes, sir.

Q. Reports and resolutions, January session, 1895?—A. Yes, sir.

Q. That paper with the green back on that I am calling your attention to is one of the files of that office?—A. Yes, sir.

Q. Did you ever see that particular paper before?—A. I don't know that I ever did.

Q. Your claim that you filed before that board came under the class of claims that were called first-class claims; is that true, or don't you know?—A. I don't know; I have not looked that up; there is a different rule now than there was then.

Q. You filed a claim at the October, 1894, session of the board of supervisors, didn't you, for certain services as justice of the peace?—A. I would have to look up the records to find out.

Q. You have forgotten about that?—A. If the record shows I did, I did.

Q. Don't you recollect whether you did or not now?—A. No, sir.

Q. And that claim came up before the board of supervisors at the January session, 1895?—A. You would have to let me see the record before I can answer.

Q. Just refer to this resolution here with this green back on it.—A. That is a resolution; that isn't a claim.

Q. That doesn't refresh your recollection any, does it?—A. No, sir; not on that subject.

Q. Well, I suppose there is a supervisors' record entitled "Book C, Eaton County." That is the record of the proceedings of the board of supervisors of Eaton County, covering certain periods of time, is it not?—A. Yes, sir.

Q. Now, see whether that refreshes your recollection about this claim that has just been referred to by referring to that book I now call your attention to.—A. That shows I filed a claim at that time.

Q. Does that refresh your recollection as to whether you did?—A. I presume that is so.

Q. You know it is so, don't you?—A. I have no reason to dispute it at all.

Q. You were making a claim to the board of supervisors for \$104.05?—A. Yes, sir.

Q. For certain fees that the board of supervisors finally acted upon at the time of this resolution, which is marked on the book "Exhibit 25, January 2d, 1896, filed February 1st, 1895, F. G. Baker, clerk," appointing commissioners on first-class claims. Now, referring to that resolution there on page 1, is not that the very claim referred to in this exhibit now, this green cover, filed by Mr. Baker, the deputy clerk that is referred to on page 389 of the proceedings of the board of supervisors, Eaton County?—A. I will read it; then I can tell.

Q. It refers to the same subject matter on page 2?—A. Yes, sir.

Q. Does that refresh your recollection now?—A. I have no question but that is correct.

Q. You haven't any question but what this paper I have shown you, file marked "Feb. 1st, 1895, F. G. Baker, deputy clerk," is the proceedings of a committee on first-class claims of the board of supervisors of Eaton County?—A. No, sir.

Q. I wish you would read from this exhibit filed February 1, 1895, F. G. Baker, deputy county clerk. For identification I have had this marked "Exhibit 61," which is the report I have been referring to as having been filed February 1, 1895, F. G. Baker, deputy county clerk, and it is marked on the back "Exhibit 61. Stockwell."—A. Yes, sir.

Q. Now, Mr. Nichols, will you please read from Exhibit 61, the last paragraph of that exhibit?—A. I don't believe I can.

Mr. FRANKHAUSER. Any resolution passed by the board of supervisors would have nothing to do with this contest between Mr. Carney and Mr. Smith, and this is not a proper way to test the credibility of the witness by showing the board of supervisors passed a resolution.

WITNESS. I can't read it; part of this I can't read, because it is so blurred and worn out.

Q. Read what you can.—A. It would not make very much sense. [Reading:] "In regard to the bill of Justice of the Peace John C. Nichols . . . October . . . referred to us again for further . . ." and the next I can read would be, "We respectfully report that we . . . the same for consideration and have given said . . . opportunity to be heard again in support of his claim . . . as we reported to you last October that we believe . . . collusion with the officers of this county . . . disorderly person . . . we more thoroughly believe that . . ."

Q. Can't you see that?—A. No, sir. [Reading:] "We did at that time call for sworn statements of the various officers."

Q. Can't you read that?—A. No, sir; if you can see it you have got better eyes than I have; if you will give me a glass, I will read it all to you. [Reading:] "Statement of the various officers who have been included in the proceedings had in this case, copies of which are herewith submitted, and we would recommend that the bill of John C. Nichols be allowed at the same figure we reported at that time."

Q. What is the next paragraph?—A. (Reading:) "The bill of said John C. Nichols, filed in January, 1895, amount claimed \$104.05, we would recommend that \$15.70 be allowed, and that the fees amounting to 45 . . . we wish to say that these cases are tramps or disorderlies who have been sent to Detroit as by the direction of this board, we have not allowed any of these bills."

Q. Now, I would like to have you read again that next to the last paragraph on page 2 of Exhibit 61.—A. (Reading:) "We would respectfully report that upon investigation . . . provision for all the tramp and disorderly cases were . . . and the witnesses' certificates issued were fraudulent, and that they were issued to the night watchman, who was at home and asleep while the cases . . . complaints made in these cases after . . . in some instances were . . . the evening following and in some cases, several days after the disposal of the supposed offenders . . . warrants charging were in many cases not made out . . . at the disposal of the offenders and the returns thereof were signed in some cases days after the day on which they were supposed to have been returned, and that requisitions for costs were signed after the disposal of the offenders . . . such time most convenient to the night watchman. Your committee would further report that after we had nearly completed our investigation of the aforesaid claims there was a proposition made to us by two of said justices of the peace to make restitution to the county for the amount drawn out of the county treasury by said fraudulent witness certificates, in consideration of which your committee would respectfully recommend that no proceedings be instituted against said justice of the peace for malfeasance or official misconduct in accordance with such a proposition, your committee decided on a day set to look over the witnesses certificates on file in the clerk's office and ascertain the amount of such certificates issued by each of said justices of the peace and determine the amount to be paid. Such canvass of such certificates to be made in the presence of such justices of the peace, with the aid of the docket, the amounts were determined as follows: John C. Nichols, \$113.50; F. G. Baker, \$76.80; George L. Houser, \$128.40."

Q. There is some writing under that name of George L. Houser with a pen?—A. Yes, sir.

Q. What you read before was typewritten?—A. Yes, sir.

Q. Read what follows in pen.—A. (Reading:) "F. G. Baker and John C. Nichols, having complied with the aforesaid proposition, your committee recommend that no proceedings be instituted against them."

Q. You never complied with it, did you?—A. That report says I did.

Mr. ADAMS. I move to strike out the answer.

WITNESS. I would have to look it up; that report says I did.

Q. I didn't ask you what the report says. Show me where the report says you did.—A. "F. G. Baker and John C. Nichols having complied with the aforesaid proposition, your committee recommend that no proceedings be instituted against them."

Q. Did you ever do it—pay the money back to the county?—A. If I complied with that proposition, I did.

Q. I didn't ask you that; I asked you whether or not you ever complied with that report of the committee?—A. That report says so.

Mr. ADAMS. I move to strike out the answer.

WITNESS. Leave it just as it is.

Q. I put the question to you whether you ever paid that money back to the county of Eaton?—A. I will answer according to that report; I will say yes.

Q. Did you do it—did you pay it back?—A. I would have to look it up; I don't know.

Q. You know, as a matter of fact, you never did, don't you?—A. No, sir; I do not.

Q. The fact is, you never paid all that money back to the county of Eaton, and haven't done it yet; isn't that a fact?—A. If I agreed to pay it back, I paid it all back, and that report says I did.

Q. You know you didn't pay any of it back, don't you?—A. No, sir; I do not.

Mr. ADAMS. I move to strike out what the witness says the report shows, as incompetent and his conclusion. The report that has been read speaks for itself, and it is not for the witness to say what the report shows.

Q. If you paid that money back, who did you pay it back to?—A. It would be to the county treasurer.

Q. Did you get a receipt for it?—A. Yes, sir; I think I did. If I paid it back I got a receipt for it.

Q. Have you got that receipt?—A. I don't know; I haven't hunted for it yet.

Q. You have no recollection that you ever got one for it from the county treasurer or anybody in charge of that office?—A. I have no recollection about the matter at all.

Q. This transaction I have just called your attention to is not very fresh in your mind?—A. It has been a number of years ago.

Q. It was in 1895?—A. Yes, sir; nearly 20 years ago.

Q. You mean to be understood now that you don't know whether you ever paid that money back or not, from recollection?—A. No, sir; I would have to look it up.

Q. You did issue some warrants for the arrest of these tramps, didn't you, which were the subject matter of the question before that committee of the board of supervisors and before the board of supervisors?—A. Yes, sir.

Q. F. G. Baker and George L. Houser were both justices of the peace at the same time you were?—A. Yes, sir.

Q. In 1894 and 1895?—A. Yes, sir.

Q. You did issue certificates, didn't you, to the night watchmen when they were not at the trial of some of these tramps?—A. No, sir.

Q. That was the claim of the board of supervisors, was it not?—A. Yes, sir.

Q. You complied with the request of the board and agreed to the proposition that they had made you there, didn't you?—A. That report says so.

Q. That is one of the things they were claiming when you appeared before the board?—A. Yes, sir.

Q. You appeared before that committee and agreed that you would do as they asked you to do in reference to a settlement of this matter they were making inquiry about?—A. I think I did.

Q. And upon your agreement that you would do so, they struck out a part of their report, as appears here, and drew a line through it, which I am going to read into the record, didn't they, upon the agreement on your part that you would comply with it?—A. I don't know.

Q. With that agreement on your part that you would pay back those fees, they struck out this part of their report here in Exhibit 61, and, as a matter of fact, you never did comply with it and haven't to this day; isn't that true?—A. No.

Q. Have you paid that money back?—A. I think I have.

Q. You paid it back to the county treasurer?—A. Yes, sir.

Q. You paid back to the county treasurer that \$113.50, did you?—A. Yes, sir.

Q. In one sum of money? How soon did you do it after this January, 1895, session of the board of supervisors?—A. I don't know.

Q. You don't know when you did it?—A. No, sir.

Q. Who did you pay it to?—A. I don't know.

Q. What did you pay it in?—A. It was taken out of a bill.

Q. You presented later on another bill to the county?—A. Yes, sir; several of them.

Q. The board refused to allow those bills and simply took it out of them, did they?—A. I wouldn't put it that way.

Q. You didn't voluntarily come up and pay that money back to the county of Eaton, did you, until you presented some bills, and they had to take it out of those bills that you subsequently presented; isn't that a fact?—A. No, sir.

Q. Do you know J. W. Ewing, a notary public?—A. Yes, sir.

Q. He lives in Charlotte?—A. No, sir.

Q. Where did he live?—A. At that time in Oneida; in Grand Ledge now..

Q. Do you know Mr. Bickley?—A. Yes, sir.

Q. He was the night watchman?—A. Yes, sir.

Q. In Charlotte, was he?—A. He was something here.

Q. Do you know Herod D. Mitchell?—Yes, sir.

Q. Was he an officer in Charlotte?—A. Yes, sir.

Q. Do you know Mr. Loup?—A. Yes, sir.

Q. Was he an officer in Charlotte, a constable?—A. Yes, sir.

Q. Do you know Moses F. Boswell?—A. Yes, sir.

Q. Was he a constable in Charlotte?—A. No, sir.

Q. Was he an officer?—A. Not in Charlotte.

Mr. ADAMS. I offer in evidence all of the affidavits that are attached to this Exhibit 61 and the whole of Exhibit 61 in evidence.

Mr. FRANKHAUSER. I will object to it, and I will further object to the cross-examination for the last two hours as having nothing to do with this election contest.

Mr. ADAMS. It bears on the credibility of the witness here.

Mr. FRANKHAUSER. You are bound by his answers.

Q. You read that report over, didn't you—Exhibit 61——

Mr. FRANKHAUSER. I object to it as incompetent and immaterial; it doesn't tend to discredit the witness and has nothing to do with this contest.

Q. (Continuing.) At the time you appeared before that committee of the board of supervisors?—A. No, sir.

Q. It was read over to you?—A. No, sir.

Q. You made that agreement without knowing what was claimed in these affidavits?—A. I didn't know there were any affidavits.

Q. But the committee made a claim to you that you had issued those certificates and other instruments mentioned in this report at the time you made that agreement with that committee?—A. Yes, sir.

Q. And on that claim that was made by that committee, you made that agreement to pay back that \$113.50, didn't you?—A. Yes, sir.

Q. That you had taken out of the public funds of the county of Eaton?—A. I never took a cent out of it.

Q. That you made a claim for?—A. I never made a claim for it.

Q. Did you issue any certificates to any officers for witness fees growing out of this transaction?—A. Yes, sir.

Q. And those officers got on those certificates you issued their fees?—A. Yes, sir.

Q. Monday or Tuesday, when we come in again, bring a glass with you and see if you can't read that a little better than you have this morning.—A. All right.

Q. Now you stated that you acted in some capacity in the second ward of the city of Charlotte in carrying on the election proceedings on the 5th day of November, 1912?—A. When?

Q. Didn't you state that yesterday afternoon?—A. No, sir.

Q. You didn't mean to state that, did you; if you did, state it?—A. I don't recollect about stating it, but there is no question about the fact.

Q. I asked you yesterday whether you had acted there in some capacity in the second ward of the city of Charlotte in reference to handling votes?—A. I acted as challenger for the Republican Party.

Q. You didn't handle any votes in that second ward?—A. Yes, sir.

Q. On the 5th of November, 1912?—A. Yes, sir.

Q. Did you act or assume to act on the election board in doing that?—A. No, sir.

Q. You were not performing any of the duties of any of the election board?—A. Just passing ballots.

Q. That was one of the duties of the election board?—A. Yes, sir.

Q. And not a duty of any citizen not a member of that board as you understood the law?—A. Yes, sir.

Q. You understood the law in that regard that day before you began doing that, didn't you?—A. Yes, sir.

Q. You were a lawyer then?—A. Yes, sir.

Q. You were a candidate for office too, were you not?—A. Yes, sir.

Q. You knew that as a candidate for office you didn't have any business to receive ballots, didn't you?—A. Yes, sir.

Q. You knew that to be the law?—A. Yes, sir.

Q. Well, knowing that to be the law you went in and acted as one of the inspectors of that election?—A. I did not.

Q. In place of one of the inspectors of that election, didn't you?—A. I deposited four or five ballots at the request of Mr. Knowles.

Q. When you were depositing those ballots you were acting as inspector?—A. I just did the manual work; there is no question about that.

Q. You understood this to be the law at that time?

Mr. FRANKHAUSER. I object to your reading the law as incompetent, irrelevant, and immaterial, and the witness admits he knew what the law was; what is the use of reading it into the record.

Q. I show you a book here, Revision of 1911, State of Michigan, Laws relating to Elections, compiled under the supervision of Frederick C. Martindale, secretary of state, Lansing, Mich., and call your attention to page 43 under the heading "Manner of conducting general elections," being act 190, P. A. 1891, as amended. The people of the State of Michigan enact: (139) 3612. Section 1. That at all elections at which any presidential elector, Member of Congress, member of the legislature, state or county officer or circuit judge is to be elected, or any amendments to the constitution, the supervisor, two justices of the peace not holding the office of supervisor or township clerk whose term of office will first expire and the township clerk of each township, and the assessor if there be one, an alderman of each ward in a city shall be the inspectors of election: *Provided*, That in all voting precincts where by special enactment, provisions exist for designating inspectors of election said provisions are not to be superseded, but such officers shall be the inspectors of election under this act. *And provided further*, That no person shall act as such inspector who is a candidate for any office to be elected by ballot at said election." I have read that correctly?—A. Yes, sir.

Q. You knew that to be the law when you went into that second ward at the polls and deposited ballots in the ballot box?—A. Yes, sir.

Q. In the face of knowing that you deliberately did that act?—A. I did at that time; yes, sir.

Q. You said you were a challenger in that precinct that day?—A. Yes, sir.

Q. For the Republican Party?—A. One of them.

Q. Was there another one there?—A. Yes, sir.

Q. While you were there?—A. Part of the time.

Mr. FRANKHAUSER. In so far as they seek to apply that law to the city of Charlotte, the second ward thereof, it does not apply.

Mr. ADAMS. The city charter we already have in; this covers every precinct in this State.

Q. Who was the other Republican challenger there for the Republican Party?—A. Harry Dyer.

Q. Did you have any written designation appointing you as challenger in that ward on that election day?—A. Yes, sir.

Q. What did you do with it?—A. I left it at the polls that day.

Q. Who made the appointment?—A. Mr. McPeck.

Q. When did you begin to act as challenger that day in that precinct?—A. I think I didn't go down until 10 or half past and went away about 2 o'clock.

Q. In the afternoon?—A. Yes, sir.

Q. Did you go back again to act as challenger?—A. I came back at the time of the counting of the ballots.

Q. When was it that you received the ballots there to put them in the ballot box?—A. At noon, when Mr. Hamilton was taken sick.

Q. Just at noon?—A. I will not say precisely at noon.

Q. How near noon?—A. Well, within an hour of it.

Q. When did you quit doing that?—A. Well, now, there was a voter standing there ready to deposit his ballot, and the polls were full, I think, or about full, and Mr. Knowles, the other alderman, had a ballot in his hand, and I handed it to this other gentleman to go in one of the booths; that is all I did.

Q. How many booths did you have?—A. I think four or five.

Q. You claimed there were how many ballots that you deposited?—A. Not to exceed six, anyway.

Q. Those ballots were handed to you by the voters after they came out of the booths?—A. Yes, sir.

Q. You took them?—A. Yes, sir.

Q. And you put them in the ballot box that was used there for depositing ballots for the candidates for Representative in Congress at that election?—A. Yes, sir.

Q. What did you do after you quit that particular work?—A. What do you mean?

Q. Where did you go?—A. When I quit depositing ballots?

Q. Where did you go?—A. I sat around there.

Q. Inside of the railing?—A. No, sir.

Q. Didn't you sit inside of the railing any?—A. I was not inside of the railing then.

Q. When you were receiving the ballots?—A. No, sir.

Q. Where did you stand outside?—A. Outside of the railing; there was a rope tied up there.

Q. Did you or not go inside, where the rest of the members of the election board were at that time carrying on that election, when you deposited those ballots in the ballot box?—A. No.

Q. You stood outside, where the by-standers had a right to be?—A. An inch rope between us, that is all.

Q. Between who?—A. The ballot box and myself.

Q. Outside of the rope where the public and bystanders had a right to be, you stood where they had a right to be, when depositing those ballots?—A. Yes, sir; and where the inspectors stood when depositing them, too.

Q. You left there at what time after you had deposited those ballots in the ballot box?—A. About 2 o'clock, I think.

Q. Where did you go?—A. Down to the fourth ward.

Q. Did you go back to the second ward again that afternoon before the polls closed?—A. I think the polls were closed when I got back.

Q. Did you visit any of the other voting places in Charlotte that day besides this second ward voting place?—A. I think not.

Q. Are you sure about that?—A. No, sir.

Q. Were you there about 5 o'clock that afternoon on the 5th of November in the second ward voting place?—A. Yes, sir.

Q. When did you begin counting ballots there?—A. I presume at 5 o'clock.

Q. Were they counting when you got back?—A. I think so; I am not positive about that.

Q. Did you stay there from the time you got there, shortly after 5 o'clock, until the count of the ballots in that second ward was completed?—A. Yes, sir.

Q. Didn't go home to supper?—A. I had my supper before I came down.

Q. You stated yesterday that you protested against the count of a ballot or ballots for you as circuit court commissioner?—A. Yes, sir; not only in my favor but against me, the same principle.

Q. The principle that you were contending for was a principle that might operate against you?—A. It did in this election both ways.

Q. You were not, when making that statement there to the election board, trying to benefit your opponents on that ticket, but to benefit yourself as well?—A. I made it for the purpose of having the count correct if it would operate that way.

Q. You did not make that suggestion to the election board there that day for just exactly the purpose you stated yesterday in your answer to Mr. Frankhauser's question; you remember that answer, do you?—A. What was that?

Q. Don't you remember what your answer was yesterday?—A. What did I answer?

Q. Don't you remember?—A. I don't recollect.

Q. He didn't ask you about that at all?—A. I don't know.

Q. You don't remember that?—A. He asked me a question about counting the ballots.

Q. You don't remember whether you told Mr. Frankhauser yesterday afternoon what you said there about some of those ballots?—A. I don't remember what I said.

Q. What did you say yesterday afternoon in answer to that question to Mr. Frankhauser?—A. I said where a cross was put opposite my name, where a man voted the Democratic ticket; that is the substance of it, and the other name was not erased off that it should not be counted for me. If they were counting the Republican ticket and that cross was put before my opponent's name, it should not be counted for him.

Q. Didn't you yesterday say you didn't want any votes counted for you that didn't belong to you?—A. I don't know whether I said that or not, but that is a fact.

Q. You left it in about that shape yesterday afternoon, didn't you?—A. I don't know what shape it was left in, but that is true; I didn't want a vote counted for me that didn't belong to me.

Q. Those returns that came in from the various election precincts to the county clerk's office after November 5, 1912, election were, after you opened them, there around the county clerk's office for the public generally to inspect, if they wanted to?—A. After we made the tabulation; yes, sir.

Q. When did you make that tabulation?—A. As the returns came in.

Q. Who helped you to make it?—A. Miss Lohr.

Q. Who else was present when you made the tabulation, when you were making it?—A. I was not present when she made the figures at all; she took the books and made the tabulation.

Q. When you opened them up as they came in, you did not make the tabulation right away?—A. It was given to her to do, and she did the work.

Q. Was there anybody in there on the 6th day of November, in the office of the county clerk, at the time any of these returns came in from the townships?—A. I presume there was.

Q. And the books were looked over before any tabulation was made, in many instances, were they not?—A. I don't know of any.

Q. Do you say they were not?—A. No, sir.

Q. Is it not a fact that when some of these returns came in there, you opened them right up, you, being the county clerk of Eaton County, broke those seals on some of those envelopes and opened them up, and had the returns out before any tabulation was made of some of those returns, and the bystanders and people who happened to be in the county clerk's office were getting information from what those returns showed—at least some of the particulars of what they showed?—A. There might have been.

Q. As a matter of fact, before some of these returns were tabulated, after you broke the seals on the envelopes and took those returns out, before you tabulated them, some of the people who happened to be in the county clerk's office examined them personally—some of those returns?—A. They might have looked over the returns; yes, sir.

Q. You were not selected as an inspector in the second ward of Charlotte on the 5th day of November, 1912, selected by the bystanders who happened to be in there at the time you undertook to put those ballots in the box and act in that capacity, were you?—A. No, sir.

Q. There was no motion made by the bystanders there that John C. Nichols, you, should act as inspector of the election there at that time, was there?—A. No, sir.

Q. No motion was made by the election board that you should act in that capacity, was there?—A. Only one of the board was there—that was Mr. Knowles—and he told me to do it.

Q. You didn't take any oath, did you, before you proceeded to receive and deposit those ballots in the ballot box?—A. No, sir.

Q. You took no oath to act there in that capacity on that election board that day, or in depositing those ballots in that ballot box in Charlotte, second ward, up to the time you deposited them, did you?—A. No, sir.

D. W. KNAPP, being recalled for further cross-examination by Mr. Adams, testified as follows:

Q. Mr. Knapp, have you made search to find the affidavit that you signed shortly after the November 5, 1912, election relating to what occurred there on the election board in Sunfield?—A. Yes, sir; I made an honest and diligent search and could not find it.

Q. You did sign such an affidavit?—A. A statement or affidavit; something to that effect.

Q. I show you Exhibit 60, and ask you whether the affidavit that you signed was like this, except the names were written in ink, whether the substance of the affidavit itself was like that?—A. I think it was.

Redirect examination by Mr. FRANKHAUSER:

Q. Who swore you to that affidavit?—A. David G. Weippert.

Q. Who did you deliver it to after you swore to it?—A. I didn't deliver it to anybody; that was a copy.

Q. You don't know anything about it, then?—A. No, sir.

Q. Was the copy left with you?—A. No copy was left with me.

Q. You didn't expect to find anything?—A. Yes, sir; because I made a copy of it; I didn't know but I might want it; I made a copy myself.

Q. But you couldn't find that?—A. No, sir.

Recross-examination by Mr. ADAMS:

Q. Now, do you know when you signed it?—A. I don't remember.

Q. You signed it before whom?—A. David G. Welppert.

Q. Are you sure about that?—A. Either him or Mr. Bera, I can't tell you which.

Q. Where did you sign it?—A. There at the bank or post office; one place or the other.

Q. Was it not the post office?—A. I couldn't tell you.

Q. That is your best recollection, was it not, the post office?—A. My best recollection would be it was the post office.

Q. That is where Mr. Bera the postmaster of Sunfield was?—A. Yes, sir.

Q. Do you know who you gave it to after you signed it?—A. I don't remember of giving it to anybody.

Q. You left it there where you signed it?—A. Yes, sir.

Redirect examination by Mr. FRANKHAUSER:

Q. Where the post office is there are two room; one is the post office and another room there is a furniture room?—A. Yes, sir.

Q. Which room did you sign it in?—A. I think in the post office part.

Q. Was there anybody there besides Sunfield people at the time?—A. No, sir; Mr. Bera was the only man, I think, was in there.

Q. Nobody was there from Charlotte?—A. No, sir.

Recross-examination by Mr. ADAMS:

Q. Where did you get the affidavit?—A. I should say it was taken off of the one that Mr. Mapes and Mr. Hager signed.

Q. Where did you first get it to sign—how did it come to you—who gave it to you?—A. This was made out there and signed, and I had a copy of this and signed it.

Q. The copy you took was when you got this?—A. Yes, sir.

Q. Some person in there wanted you to sign over there, and did you make that copy, is that correct?—A. They presented me a copy of this.

Q. Was it typewritten?—A. Yes, sir.

Q. Who presented that typewritten one to you?—A. I don't know who; it was left there in my post-office box, and when I went in there I took it out and looked it over and Mr. Bera said he wanted me to sign it.

Q. So it came to you by mail?—A. Yes, sir; by mail because it was in my box.

Q. Was there any stamp on it?—A. No, sir.

Q. Was it in an envelop?—A. No, sir; just stuck in my box.

Q. No postage on it at all?—A. No, sir; no postage on it at all.

(Whereupon the hearing was adjourned until March 25, A. D. 1913, at 1 o'clock in the afternoon.)

MARCH 25, 1913—1 P. M.

JOHN C. NICHOLS, recalled, testified further in behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. Since recess have you looked over and found the affidavit of D. W. Knapp?—A. Yes, sir.

Q. Is that the affidavit [showing witness Exhibit 62]?—A. Yes, sir.

Q. I show you Exhibit 61. Is that the affidavit Judge Adams asked you to look for?—A. Yes, sir.

Q. You found it in your office?—A. Yes, sir.

Q. Is that a carbon copy of this affidavit signed by Mr. Hager and Mr. Mapes?—A. Yes, sir.

Mr. FRANKHAUSER. We offer it in evidence.

(Affidavit reads as follows:)

"STATE OF MICHIGAN, County of Eaton, ss:

"D. W. Knapp, being duly sworn, deposes and says that they reside in the township of Sunfield, Eaton County, State of Michigan; that at the general election held in said township on the 5th day of November, 1912, J. H. Palmer, D. A. Hager, and F. H. Bacon acted as inspectors of said election, and that Harry Mapes and D. W. Knapp acted as clerks of said election; that immediately upon the closing of the polls of said election said board of election inspectors proceeded to canvass the votes cast at said election, according to law;

that about the hour of 1 o'clock in the morning of the 6th of November said J. H. Palmer went home and did not return to finish the canvass until said canvass was nearly completed; that the canvassing of said ballots was done in public; that during the entire time of counting said ballots the public might have been present if they so desired, but as to whether at all times during said count there were others present besides said board they are unable to state; that they deny that they had any knowledge of any report that John M. O. Smith had lost the election to Congress by a small majority or otherwise; that the other members of said board were not absent from said polling and canvassing place to exceed 30 minutes; that they had a talk about adjourning the count because of the lateness of the hour, but that they received information from the prosecuting attorney of said county that they should proceed with the count until it was completed; these deponents further say that the result of said canvass was read aloud that any persons who happened to be present might know the result.

"D. W. KNAPP.

"Subscribed and sworn to before me this 16th day of November, A. D. 1912.

"[SEAL.]

J. H. BERA, *Notary Public*.

"My commission expires February 28, 1913."

Cross-examination by Mr. ADAMS:

Q. The J. H. Bera whose name is attached to this Exhibit 61, Mr. Nichols, is the J. H. Bera who is postmaster at Sunfield?—A. Yes, sir.

Q. Where did you find this affidavit, Exhibit 61, since the adjournment of the hearing last Saturday?—A. On my table.

Q. On which table?—A. In the office.

Q. How did you get it; how did it come to you?—A. It came to me through the mail.

Q. When?—A. Soon after, a day or two.

Q. I understood you to say the other day, did I—I understand, or did you say the other day when on the witness stand that you had given this affidavit to Congressman Smith?—A. I hardly think you did.

Q. You didn't say that, eh?—A. Well, I think not; I said something else in connection with it.

Q. Did you say that?—A. Yes, sir; but something else went with it. If I said I didn't give it to him, how did it come in my office?

Q. You had given to Congressman Smith, prior to the time you testified in this hearing, Exhibit 60, the affidavit of Mr. Hager and Mr. Mapes, had you?—A. Yes, sir.

Q. Why didn't you give him Exhibit 61?—A. Because I didn't have it at the time I gave him that.

Q. When did you give Congressman Smith Exhibit 60?—A. I think the next day after it was executed.

Q. You got Exhibit 61, then, a couple of days after you were to Sunfield, didn't you?—A. A few days after.

Q. How few days?—A. Two or three days afterwards; I got it on the 19th.

Q. What on the 19th?—A. The D. W. Knapp affidavit.

Q. On the 19th of what month?—A. Of November.

Q. You got Exhibit 60 on the 16th of November [handing witness affidavit]?—A. Yes, sir.

Q. When after the 16th of November did you first give that Exhibit 60 to Congressman Smith?—A. The day following.

Q. On the 17th day of November, 1912?—A. Yes, sir.

Q. Have you got Exhibit 61—the D. W. Knapp affidavit—on the 19th of November, 1912?—A. Yes, sir.

Q. You didn't give that to Mr. Smith?—A. No, sir.

Q. Why didn't you?—A. Well, I don't know why I didn't; I had it.

Q. Did you tell him you had it?—A. Yes, sir.

Q. When did you tell him you had it?—A. The same day, or shortly after.

Q. You kept it in your possession, did you, from the time you received it on the 19th of November down to when?—A. Until to-day.

Q. Had in your possession all the time?—A. Yes, sir.

Q. You never delivered it to Mr. Smith?—A. No, sir; not until to-day.

Q. You delivered it to him to-day?—A. Yes, sir.

Q. For the first time?—A. Yes, sir.

Q. It hadn't been out of your possession since it came into your possession until to-day?—A. No, sir.

Q. Did you receive it in an envelope?—A. Yes, sir.

Q. Have you the envelope?—A. Yes, sir.

Q. Have you it here?—A. Yes, sir.

Q. Please let me see it. [Witness produced envelope.] What time on the 19th of November did you get this Exhibit 61, do you remember?—A. No; I wouldn't remember exactly, but some time in the forenoon.

Q. Some time in the forenoon?—A. Yes, sir.

Q. Of the 19th of November, you got it?—A. Yes, sir.

Q. From the post office in Charlotte?—A. No, sir.

Q. Where did you get it?—A. At my office.

Q. You have a delivery here, do you, a city delivery?—A. Yes, sir.

Q. Were you at your office on the 18th of November, 1912?—A. I think so.

Q. Is all your business mail delivered at your office?—A. Yes, sir.

Q. Did you not get this Exhibit 61 on the 18th of November, 1912?—A. No, sir.

Q. Sure about that?—A. Yes, sir.

Q. What is the last delivery you have in the city, if you know, of mail in the city of Charlotte on the 18th of November, 1912?—A. I don't know the exact hour, but it is past 4 or 5; something like that; I don't know the hour.

Q. Did you get your mail from the post office on the evening of November 18, 1912?—A. No, sir.

Q. So this affidavit, Exhibit 61, did come into your possession on the 18th of November, 1912?—A. I don't understand your question.

Q. Isn't that plain; don't you understand it; did this Exhibit 61 come into your possession—actual possession—on the 18th of November, 1912?—A. I didn't have my hands on it.

Q. Did you see it on the 18th of November, 1912?—A. No, sir.

Q. Did you see the envelope in which it came on the 18th of November, 1912?—A. No, sir.

Q. On that day, I mean?—A. No, sir.

Q. Had you received any information prior to the time that Exhibit 61 actually came into your possession, after it was signed by D. W. Knapp, that it had been signed by Mr. Knapp?—A. No, sir.

Q. And you kept Exhibit 61 in your possession from the time it was delivered to you by the postal authorities until to-day, did you?—A. Yes, sir.

Q. You never let it go out of your possession until to-day?—A. I kept it all the time.

Q. Did you give it to anybody?—A. No, sir.

Q. Did anybody see it in your possession that you know of, or anywhere else after you took it out of the envelope on the 19th of November, you say, up to the time you handed it to Congressman Smith to-day?—A. I think not.

Q. Where did you leave it before it was signed by Mr. Knapp when you were at Sunfield?—A. I couldn't answer that positively, whether Mr. Mapes or Mr. Bera.

Q. You left it with J. H. Bera, didn't you?—A. I told you I couldn't tell you positively; it was one or the other.

Q. Do you say now you can't tell which one of those two men you left it with before Mr. Knapp signed it in Sunfield?—A. I couldn't now; no, sir.

Q. Was there any reason existing why you didn't deliver that Exhibit 61 to Congressman Smith after you received it through the mail?—A. No, sir.

Q. You say that this is the same affidavit, Exhibit 61, that you received signed by D. W. Knapp on the 19th of November, 1912, is it?—A. Yes, sir.

Q. That is the only affidavit, Exhibit 61, that you received from D. W. Knapp signed by him, after you were out at Sunfield to get this affidavit, shortly after election, is it?—A. Yes, sir.

Q. How many of the election returns received by you when you were assuming the duties of county clerk, directed to the county clerk from the various voting places in this county, were in an unsealed condition, the envelopes containing those returns when they came to you acting as county clerk?—A. If you will let me see the envelopes, I will tell you. [Envelopes handed witness.] The township of Bellevue, the township of Eaton Rapids, the township of Windsor, the first ward of the city of Grand Ledge, and the second ward of the city of Grand Ledge.

Q. All those were unsealed when they came into your possession, were they—those that were addressed to the county clerk?—A. Yes, sir.

Q. I notice the one from the second ward of the city of Eaton Rapids has a notation that the poll book is missing; whose writing is that?—A. I don't know.

Q. Was the poll book of that return missing when it came into your possession?—A. I don't know that.

Q. Don't you know whose writing that is there in lead pencil on that envelope?—A. No, sir; I do not.

Q. You were in charge of the office when the returns came in?—A. That has been put on lately.

Mr. ADAMS. I move to strike out the answer.

Q. You were in charge of the office of county clerk when the returns from the second ward of Eaton Rapids came in the office?—A. Yes, sir.

Q. You don't know who wrote on that envelope containing the returns from that ward, "Poll book missing," and you don't know whether the poll book was missing when those returns, as contained in that envelope, came into your possession?—A. I don't recall now.

Q. I notice on the envelope containing the returns from the third ward of the city of Eaton Rapids, addressed to the county clerk, the words, "Poll book missing," on that envelope; do you know whether the poll book was missing when that return came into the county clerk's office?—A. No, sir.

Q. Do you know whose handwriting that is, "Poll book missing"?—A. No, sir.

Q. You didn't write it?—A. No, sir; nor caused it to be done.

Q. I show you an envelope addressed to the county clerk containing some returns from the township of Benton, Eaton County, and on that envelope on the outside I notice the words, "Tally sheet missing." Do you know who wrote those words on that envelope?—A. No, sir.

Q. Do you know whether, when that envelope containing those returns came into the county clerk's office, which you were then in charge of, that the tally sheet was missing from those returns?—A. I do not.

Q. I show you the election returns addressed to the county clerk in an envelope from the second ward of the city of Charlotte, and on the outside of that envelope in lead pencil are the following words, "Statement book missing." Can you state whether or not the statement book was missing from that envelope when that envelope came to the office of the county clerk shortly after the election?—A. Yes, sir; I can.

Q. Was it missing?—A. Yes, sir.

Q. Did you ever find it?—A. I never looked for it; I don't know.

Q. That was the voting place in the city of Charlotte where you participated for a while in the capacity of inspector of elections?—A. That is where I voted.

Q. I didn't ask you whether it was where you voted, and I move that the answer be stricken out. That was the voting place in the city of Charlotte where you participated for a while in the capacity of inspector of election on the 5th day of November, 1912?—A. Yes, sir.

Q. You did that in that precinct on the 5th day of November, 1912, in the capacity or assumed the capacity of inspector of election, didn't you?—A. I deposited—I didn't assume the entire duties of inspector of election at that time.

Q. You did act there and receive ballots from the voters of that very ward?—A. And deposited them; yes, sir.

Q. On the 5th day of November, 1912, in the ballot box?—A. Yes, sir; at the request of—

Q. (Interrupting.) I didn't ask you about anybody's request; answer my questions and we will get along a good deal better. That was the precinct in which you say that the statement book was missing from the election returns when the election returns came into the office of the county clerk; is that true or not?—A. That is true.

Q. The returns from the township of Carmel, Eaton County, were not sealed when they came into possession of the county clerk—the envelope, I mean, addressed to the county clerk?—A. Yes, sir.

Q. That was not sealed when those returns came into the office of the county clerk, was it?—A. It was.

Q. I show you Exhibit 63 and ask you to examine it and tell me. That is the envelope, isn't it, which contained the election returns of that election held on November 5, 1912, in the township of Carmel, Eaton County, Mich.?—A. I think it is.

Q. That is the envelope that came into your office, isn't it?—A. I think so; I have no reason to doubt it.

Q. The envelope I am holding before you, marked Exhibit 62, was among the envelopes here addressed to the county clerk which you looked over and which have been produced here by the county clerk as being the election returns—the envelopes containing the stamp of the various voting places in the township elections held on November 5, 1912?—A. Yes, sir.

Q. Examine Exhibit 62 and tell me whether that envelope, when it came into the county clerk's office, was sealed.—A. I couldn't say, I told you.

Q. Will you state on the record here whether there is any sealing wax on it?—A. I don't know.

Q. Or any mucilage appearing on it?—A. No, sir.

Q. Or anything that would stick the flap of that envelope down to the envelope?—A. No, sir.

Q. How was it sealed?—A. By a string.

Q. How was the string on it?—A. Tied.

Q. Describe how the string was on it.—A. It went twice around lengthwise and across and turned and went across this way and tied securely.

Q. How was it sealed?—A. That is the way it was sealed.

Q. Was there any sealing wax on it?—A. No, sir.

Q. Then it was not sealed?—A. Yes, sir.

Q. Sealed by a string being tied around it?—A. Yes, sir.

Q. There is no sealing wax anywhere on the string?—A. No, sir.

Q. There are no indications absolutely on that Exhibit 62 that shows that any sealing wax was ever upon it?—A. No, sir.

Q. Have you with you a reading glass?—A. Yes, sir.

Q. You brought one with you?—A. Yes, sir; you requested me to.

Q. The county of Eaton, Mich.—you have lived here, you stated, a number of years?—A. I didn't say it; I wasn't asked anything about it.

Q. Well, have you?—A. Yes, sir.

Q. How long have you lived here in the county of Eaton?—A. Forty-seven years.

Q. How old are you?—A. I am past 47.

Q. Going into your forty-eighth year?—A. Yes, sir.

Q. Born in this county?—A. Yes, sir.

Q. And lived here all the time?—A. Yes, sir.

Q. You never have lived out of the county?—A. No, sir.

Q. You have been identified with the Republican Party a great many years?—A. Yes, sir.

Q. How many years?—A. I don't know; always, ever since I have voted.

Q. You have been connected with the Republican Party?—A. Yes, sir.

Q. And you have always taken a pretty prominent part in the Republican politics of the county of Eaton since you have been of age, haven't you?

Mr. FRANKHAUSER. I object; all that was gone over last week.

The WITNESS. I took some part.

Q. The county of Eaton has been a very strong Republican county, hasn't it?—A. Sometimes.

Q. Most always, hasn't it—practically always?—A. Not always.

Q. When was it Democratic?—A. I don't know.

Q. As far back as you can remember?—A. Oh, no.

Q. When about was it?—A. Well, they elected Mr. Jones register of deeds.

Q. When?—A. I can't tell you.

Q. How many years ago?—A. I don't know.

Q. Haven't you any idea?—A. I would have to look it up.

Q. Can't you tell us about how many years ago?

Mr. FELLOWS. What is the pertinency of this inquiry as applied to the contest?

Q. Can you answer that question?—A. I think about 20 years ago or a little better—20 or 24.

Q. That is one of them; who else?—A. They had Charles E. Ells for sheriff before that.

Q. When was he elected; do you remember about when he was elected sheriff?—A. It was in the eighties some time, and Mr. Wilcox was elected register of deeds.

Q. About when?—A. In the nineties some time, and Mr. Anbault and Mr. Warren have been treasurers.

Q. About when last was either of these men—the last one of them—elected treasurer?—A. In 1896. Mr. Donovan has been sheriff.

Q. How far back?—A. He just went out of office.

Q. How long was he sheriff?—A. Two terms; and they have had circuit-court commissioner and drain commissioner.

Q. It has been regarded as a very strong Republican county for a number of years?—A. They sometimes elect their candidates.

Q. It has been regarded as a very strong Republican county for a great many years, hasn't it?—A. That depends—

Q. Don't you so regard it?—A. No, sir; I do not.

Q. You think it has not been a strong Republican county?—A. Not always.

Q. Generally speaking?—A. Possibly.

Q. Well, possibly, has it been?—A. Well, I would not say yes nor I would not say no; either way. Some things I would have to look up; I don't recollect all these things. I think Mr. Ferris carried this county for governor last fall.

Q. Now, have you your reading glass with you? I want to have you read a little of this Exhibit 61. You have your reading glass here; will you read over some of the last paragraph, the last paragraph of page 1 of Exhibit 61, the report of the committee of the board of supervisors of Eaton County, to which your attention was directed last Saturday?

Mr. FRANKHAUSER. We will renew our objection to that as incompetent, irrelevant, and immaterial and in no way discrediting the witness, if that is the purpose of it.

The Witness (reading): "In regard to the bill of Justice of the Peace John C. Nichols last October, referred again to us for further hearing, and upon consideration we would respectfully report that we have given the same consideration and have given the said John C. Nichols an opportunity to be heard in support of his claim. As we reported to you last October that we believed that there was collusion with the officers in these tramp cases or disorderly persons, we more thoroughly believe just now than we did at that time, and would respectfully call your attention to the sworn statements of the various officers who have been cognizant of the proceedings had in those cases, copies of which are herewith submitted, and we would recommend that said bill of John C. Nichols be allowed at the same figure as recommended at that time. The bill of said Justice of the Peace John C. Nichols, filed in July, 1895, making a claim of \$104.05, we recommend that \$58.70 be allowed and that in these tramp cases the amount of \$45.35 be not allowed. We wish to say these cases are tramps or disorderlies that have been sent to Detroit as per the direction of this board. We have allowed in all these bills."

Q. Now, if you will read the bottom of page 2, a paragraph there.—A. (Reading:) "We respectfully report that upon investigation of the proceedings had in the tramp or disorderly cases we have ——— a very large proportion of the witnesses' certificates issued were fraudulent; that they were issued to the night watchmen who were at home and asleep while the cases were disposed of. The complaints made in these cases were signed in some instances even after—some cases several days after—the disposal of the supposed offenders; that the warrants charged for were in many cases not made out until after the disposal of the offenders, and the return thereof was signed in some cases days after the day on which they were supposed to have been returned."

Q. Does that refer to your history or the history of the tramp business?—A. That seems to be the history of the tramp business in town. [Reading:] "And that the requisitions for costs were signed often after the disposal of the offenders or at such times as were most convenient to the night watchmen. Your committee would further report that after we had nearly completed our investigation of the aforesaid claims there was a proposition made to us as coming from two of the said justices of the peace to make restitution to the county treasurer of the amounts severally caused to be drawn out of the county treasury by said fraudulent witnesses' certificates. In consideration of which your committee would recommend that no prosecution be instituted against the said justices of the peace for malfeasance or official misconduct. In accordance with such proposition your committee proceeded, on a day set, to look over the witnesses' certificates on file in the clerk's office and ascertain the amounts of said certificates issued by each of said justices of the peace and determine the amount to be paid by each. Said canvass of said certificates were made in the presence of said justices of the peace, and with the aid of the docket the amounts were determined as follows: John C. Nichols, \$113.50; F. G. Baker, \$76.56; George L. Houser, \$128.40. Justices F. G. Baker and John C. Nichols having complied with the aforesaid proposition, your committee recommend that no proceedings be instituted against them."

Q. That report, then, was signed by the committee?—A. Yes, sir.

Q. What are the names of the committee?—A. Albert Rogers, Albert Shotwell, and J. W. Ewing.

Q. There is an affidavit signed by C. S. Jackson attached to this exhibit, isn't there, sworn to before J. W. Ewing, notary public?—A. No, sir; it is not signed by Mr. Jackson.

Q. It purports to be a copy that purports to have been signed by Mr. Jackson, all in typewriting, signature and everything?—A. Yes, sir.

Q. That is attached to that report you have been reading there?—A. Yes, sir.

Q. Read that affidavit.

Mr. MAYNARD. I object to that as incompetent, irrelevant, immaterial, and hearsay, and not the best evidence.

The WITNESS (reading): "Soon after I was appointed deputy sheriff it was discovered that we were not getting our share of the work, and upon inquiry of the night watchmen of the reason for the same we were told that we did not put up. We asked what they meant by not putting up and were told that the other officers or constables paid the other night watchmen 50 cents for all tramps they run into jail. In order to get any of the business we had to pay 50 cents each for all the warrants we got to serve on tramps. I do not think the night watchman appeared and was sworn as a witness in any of the tramp cases that I know of. I never saw any of the night watchmen sworn as a witness in any of those cases. Some of the warrants, I understand, were issued by John C. Nichols and some by George L. Houser and some by F. G. Baker. In some instances the warrants were made out and issued before the trial, and in many more cases they were not made out until after the trial.

"C. S. Jackson, being first duly sworn by me this 16th day of January, 1895.

"J. W. EWING, *Notary Public.*"

Q. There is an affidavit in typewriting, the signature and everything attached to this Exhibit 61, purporting to be signed by Mr. Bosworth?—A. Yes, sir.

Q. Read that.

Mr. MAYNARD. We object to that as incompetent, irrelevant, and immaterial, and hearsay, and not the best evidence.

The WITNESS (reading): "Q. Now, then, who appeared as witnesses against tramps in cases where warrants were issued for their arrest, when a man was sent to Detroit?—A. Marshall Weeks appeared as a witness. At the jail there were no witnesses. I don't remember of a case tried at the jail where the night watchmen were sworn as witnesses, or a case I handled where the night watchman appeared as a witness. The cases I handled were before all three justices, Nichols, Baker, and Houser, and the night watchmen were not there at the trial. Duly sworn to before me January 16, 1895."

Q. There is a typewritten copy of an affidavit, all of which is in typewriting, signatures and everything, purporting to have been signed by Reuben Vickery and sworn to before J. W. Ewing, and attached to Exhibit 61?—A. Yes, sir.

Q. Read that.

Mr. MAYNARD. The same objection.

The WITNESS (reading): "A. I have been night watchman in this city since April, 1893. Constable Loup and ——— paid me 50 cents each for tramps that I put in jail. Sheriff Bosworth and Deputy Sheriff Jackson also paid me 50 cents each for the tramps that I run in there. I made complaints against these tramps before Justices of the Peace John C. Nichols, George L. Houser, and Frank G. Baker, and I have signed complaints against tramps mostly after the tramps were tried. I left the names of the tramps where the other officers could find them in the engine house. The justice gave me a witness certificate at the time I signed the complaint. I don't know that I ever came before the justice court as a witness in these tramp cases. All three justices, John C. Nichols, George L. Houser, and Frank G. Baker, have issued witness certificates to me in those cases. I get \$40 a month salary, and am employed by the city of Charlotte. The justices issued certificates voluntarily; I never asked them to. It is my observation that very few are sent to Detroit.

"Reuben Vickery, being duly sworn, gives the above as evidence before the committee on first-class claims of the board of supervisors of Eaton County.

"J. W. EWING, *Notary Public.*"

Q. You issued some of these certificates, did you?—A. I never issued a fraudulent certificate in the business.

Q. You issued some of those certificates to those officers, didn't you?—A. I issued certificates to officers for fees.

Q. Some of those that are mentioned in that report of the committee and some of those affidavits that were read, didn't you?—A. I don't know; I never issued any fraudulent certificates.

Q. You appeared before that committee of the board of supervisors, didn't you?—A. No, sir.

Q. You didn't?—A. No, sir; I was refused permission to appear.

Q. You agreed to the proposition that that committee of the board made you, didn't you?—A. Yes, sir.

Q. And you agreed to return to Eaton County some of those fees you had included in the bill you presented at the January session of the board prior to this October session of the board, and prior to this January session at which this report was submitted to you?—A. You will have—

Q. (Interrupting.) This bill that was in controversy here, that this committee of the board of supervisors made this report, Exhibit 61, with reference to, was the bill or bills that you had presented at the October, 1894, session of the board of supervisors of Eaton County; isn't that so?—A. I think so.

Q. Those bills went over and were considered again in the January, 1895, session of the board of supervisors of Eaton County?—A. Yes, sir.

Q. At the January session of the board of supervisors in the year 1895, you met the committee of the board, didn't you—the committee on first-class claims made this report, Exhibit 61?—A. Yes, sir; they claimed that I told them to let it go.

Q. You told them to let it go?—A. Yes, sir.

Q. Is that what you told them, to let it go?—A. Yes, sir.

Q. What did you mean by letting it go; that you would not make any claim for it?—A. Yes, sir.

Q. That is, you agreed to pass up any claim against the county of Eaton for the amount of the fees included in that bill filed in October, 1894—A. (Interrupting.) That was not what I meant by that at all.

Q. You hadn't heard the question yet.—A. I know pretty nearly what you were going to say.

Q. You kind of looked in my mind and saw that? You can see what I was going to ask you?—A. Yes, sir.

Q. This committee of the board by this report, Exhibit 61, that the committee of the board of supervisors made they disallowed that \$113.50 of the bill you had filed with the county for consideration by the board of supervisors at the October, 1894, session of that board?—A. That is not true.

Q. Well, you had a bill in there before the October board for \$113.50. You had a bill filed for allowance before the board of supervisors at its October, 1894, meeting amounting to \$162.75, didn't you?—A. I don't know, but I don't think so; I would want to see the bill.

Q. Isn't that your recollection of it?—A. No, sir.

Q. Do you tell us that the statement of the committee is—I guess I have those figures wrong?—A. I think so.

Q. \$149.40?—A. No, sir; that is not right. .

Q. I will let you figure it—you are pretty good at figures—and see if you can tell me how much that bill was at that October, 1894, session that you filed.—A. \$104.05.

Q. Pass along and see if there is not \$40, and something in addition to that, in the tramp cases.—A. It is \$104.05.

Q. Your bill was for \$104.05 before that board?—A. Yes, sir; that is what the report says.

Q. Is that your recollection of it?—A. I couldn't say; I have no recollection about it.

Q. The thing has gone out of your mind?—A. I have not looked it up.

Q. You have kind of forgotten about it?—A. If I saw my bill I could tell; I don't carry those things in my mind all the time.

Q. What was it the board was claiming they wanted you to refund?—A. For some witness certificates that I had drawn for witnesses that appeared in the cases.

Q. Who got the money?—A. The witnesses did.

Q. How much did that amount to?—A. They say here \$113.50.

Q. Now you appeared before the committee of the board and agreed to pay that \$113.50 back, didn't you?—A. Yes, sir.

Q. And the board agreed if you would pay it back they would not prosecute you for malfeasance?—A. Yes, sir.

Q. Did you pay it back?—A. I did.

Q. When?

Mr. FRANKHAUSER. This was all gone over last week.

The WITNESS. Shortly after this; I couldn't tell; within the next year, say.

Q. It is all paid back, is it?—A. Yes, sir.

Q. Within the next year or so?—A. Yes, sir.

Q. You paid it back to the county treasurer?—A. Yes, sir; through a bill presented to the board of supervisors.

Q. In consideration of that the board struck out a part of that report there, didn't they?—A. I don't know.

Q. A line is crossed through it now.—A. I never saw this report until Saturday or Friday last.

Q. Read there on the last page, over the signatures of Mr. Rogers, Mr. Shotwell, and Mr. Ewing, that part that has a line drawn through it.

Mr. FRANKHAUSER. Counsel is asking the witness to read into the record what the witness says is stricken out.

Mr. ADAMS. I am going to show it was done by agreement.

Mr. FRANKHAUSER. If this business keeps up—this continuous prolix cross-examination on matters that have no relation to the case—we want the record to show that we protest against it, as it is going to crowd us for time.

Mr. FELLOWS. I do not want to be regarded as criticising counsel on the other side on the record, but I think we are taking up a great deal of time with matters that, when we come to settle the case, will be sifted out, and if not sifted out they will not be considered by the committee in Congress. I feel that possibly a good deal of this cross-examination is to make a record so that the committee in Congress will not read the testimony, and would base their determination solely upon partisan grounds, and I have sometimes wondered if that was not the purpose of the contestant in making the record in this way.

Mr. ADAMS. For your elucidation I will say that we are hoping very earnestly to get a reasonable record.

The WITNESS (reading): "Inasmuch as the other two justices of the peace, John C. Nichols and F. G. Baker, have not complied with the aforesaid proposition ———, therefore your committee would recommend that the prosecuting attorney be instructed to prepare a complaint addressed to the governor against Justices F. G. Baker and John C. Nichols, and to prosecute the said proceedings accordingly for the recovery of the amounts fraudulently drawn out of the treasury by the said witnesses' certificates."

Q. What you have just read has a line drawn through it?—A. Yes, sir.

Q. You read a part before that a while ago, also last Saturday, that you said was in there, written with a pen, didn't you?—A. Yes, sir.

Q. That is, "Justices of the Peace F. G. Baker and John C. Nichols having complied with the aforesaid proposition, your committee recommend that no proceedings be instituted against them." Those words are written in with a pen?—A. Yes, sir.

Q. And the report is typewritten?—A. Yes, sir.

Q. So that you agreed with that committee that you would comply with the request of the committee, didn't you, about paying back these moneys; then that part that has a line drawn through of that report was crossed out after you made that agreement, of your own knowledge?—A. No, sir; I didn't know anything about it.

Q. That is, you didn't know whether that is the reason this line was drawn through there?—A. That is what I mean.

Q. This is the first time you ever saw Exhibit 61?—A. Yes, sir.

Redirect examination by Mr. FRANKHAUSER:

Q. Mr. Nichols, I want to examine you briefly now in regard to these Sunfield affidavits of Mr. Knapp, Mr. Hager, and Mr. Mapes. In what capacity did you act?—A. As attorney for John M. C. Smith.

Q. He paid you for your work?—A. Yes, sir.

Q. Have you been acting as his attorney in other matters?—A. Yes, sir.

Q. Have you any matters for him now?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

The WITNESS. Yes, sir.

Q. Did you go to Sunfield or do any work in connection with these three affidavits because of a desire to render him assistance as a partisan or as an attorney?

Mr. ADAMS. Objected to as leading.

The WITNESS. As an attorney.

Q. Did Congressman Smith appoint Mr. Bera postmaster?—A. No, sir.

Q. How long has John M. C. Smith been in Congress?—A. Two years.

Q. How long has Mr. Bera been postmaster?—A. I think he has been postmaster 12 or 13 years.

Q. Did John M. C. Smith ever recommend him?—A. No, sir.

Q. What class of office is that, as you understand it?—A. I don't know; I think fourth class—third or fourth class.

Q. Is it your understanding that fourth-class postmasters are not subject to appointment by Congressmen?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

The Witness. I don't know anything about it.

Q. If an article appeared in the Kalamazoo papers during this contest that Congressman Smith appointed Mr. Bera, of course that would be a mistake, would it not?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

The Witness. Yes, sir.

Q. Was there anything about the Knapp affidavit that you cared to conceal, or wished to conceal, in any way, shape, or form?—A. No, sir.

Q. Was there any reason on earth that you did not deliver it to John M. C. Smith or did not show it to anybody else?—A. No, sir; I had it in my office.

Q. When you testified here last week, did you have any motive or object in concealing the whereabouts of that affidavit?—A. I don't think I did; I said either he had it or I did.

Q. Did you remember that affidavit was the same as you drew for Mr. Hager and Mr. Mapes?—A. Yes, sir.

Q. I call your attention to Exhibit 59; was that a certified copy of the protest that Mr. Robinson filed with the board in behalf of the Democratic ticket or a part of it?—A. Yes, sir; that is one of the protests he filed.

Q. What township does that refer to?—A. Sunfield.

Q. Was there another in relation to Carmel?—A. Yes, sir.

Mr. FRANKHAUSER. I will read Exhibit 59. [Reading:]

"STATE OF MICHIGAN,

"County of Eaton:

"To the Board of County Canvassers of the County of Eaton and State of Michigan:

"Now comes Samuel Robinson, of the city of Charlotte, in the county of Eaton and State of Michigan, an elector in said county, and hereby protests to your honorable body against the including of the votes of the township of Sunfield, in said county of Eaton and State of Michigan, in determining the result of the vote cast at the general election held on the 5th day of November, A. D. 1912, for the reason that the election inspectors of said township of Sunfield aforesaid did not proceed immediately to and count said votes so cast at said general election as provided by law, and did not publicly count said ballots so cast at such election as provided by law.

"This protest is based on the affidavit hereto attached and made a part of this protest.

"SAM ROBINSON.

"Dated November 12, 1912."

Q. That day, did you know Sam Robinson?—A. Yes, sir.

Q. Isn't that the way he always signs his name?—A. I don't know.

Q. Anyway, Sam or Samuel was the man?—A. Yes, sir.

Mr. FRANKHAUSER (reading):

"STATE OF MICHIGAN,

"County of Eaton, ss:

"Rosslyn L. Sowers, being duly sworn, says that he is a resident of the city of Charlotte, in the county of Eaton and State of Michigan, and that he has been a resident of said county for more than 20 years previous to the date hereof.

"Deponent further says that, at the general election held in the township of Sunfield, in said county of Eaton aforesaid, on the 5th day of November A. D. 1912, that the inspectors of said election in said township did not immediately proceed to and count the votes cast at said election and determine the result thereof as required by law, but that said inspectors after commencing the count of the ballots so cast at such election, thereupon adjourned until 7 o'clock in the forenoon of the next day, and thereafter reconvened said board of election inspectors at 2 o'clock in the forenoon, or morning, and proceeded to the counting of the ballots so cast at said election and concluded said counting at 6 o'clock in the morning and before the time fixed for the reconvening of

said board of election inspectors as announced at the time of the adjournment so made.

"Deponent further says that the information upon the foregoing affidavit is made was furnished to deponent by John H. Palmer, one of the inspectors of election in said township of Sunfield on the 5th day of November, 1912.

"ROSSLYN L. SOWERS.

"Subscribed and sworn to before me this 12th day of November, 1912.

"FRED MILBOURN.

"Notary Public, Eaton County, Mich.

"My commission expires February 28, 1914."

"STATE OF MICHIGAN,

"County of Eaton, ss:

"I, John C. Nichols, clerk of the county of Eaton and of the circuit court thereof, the same being a court of record having a seal, do hereby certify that the foregoing is a true copy of a protest filed in my office by the above-named party and of the whole thereof.

"In testimony whereof I have hereunto set my hand and the seal of the said circuit court this 7th day of December, A. D. 1912.

"[SEAL.]

"JOHN C. NICHOLS, Clerk."

Q. That is the seal of the circuit court?—A. Yes, sir.

Q. I will ask you now from your recollection as to the other proceedings that were filed relating to Carmel.

Mr. ADAMS. I will object to that; there is no showing but what there is better evidence.

Q. Were you not asked the other day whether you could find that?—A. Yes, sir.

Q. Didn't you say you could not find it?—A. No, sir.

Q. Do you know whether Mr. Ford, the county clerk, has looked for it?

Mr. ADAMS. I object to that as hearsay and as incompetent until it is shown that the original was lost.

The WITNESS. We looked for it together.

Q. Did you find it?—A. No, sir.

Q. Now, I will ask you, so far as you can remember, as to what the contents of that other one were?

Mr. ADAMS. I object to that as incompetent; there is no showing that the paper is not in existence by anybody who has charge of the files or the regular custodian of them.

The WITNESS. The first part of it, I think, is practically the same except this word "Carmel" in place of "Sunfield," and the affidavit is made by N. W. Spencer in place of Rosslyn L. Sowers. I don't know who swore him to it.

Q. Was that what Mr. Carney based his protest upon in regard to those two townships?

Mr. ADAMS. Objected to as calling for the conclusion of the witness and incompetent, irrelevant, and immaterial.

The WITNESS. He said so in his motion.

Mr. ADAMS. I object to what he said in his motion; there is better evidence.

Q. Was there any other proof or alleged proof before the board regarding these two townships at that time?—A. No, sir.

Q. Was that motion oral?—A. Yes, sir.

Q. I show you Exhibit 6 and call your attention to the last page, and will ask you what that is?—A. That is the record of the filing of the protest of Sam Robinson relating to Carmel and Sunfield Townships, a protest to Dwight Backus counting or issuing a certificate of election to E. G. Praym, protest of Claude S. Carney, Representative in Congress.

Q. Referring specially to the protest of Mr. Carney, explain briefly how that was gotten up—who worded it and how it was gotten up.—A. Mr. Carney dictated it to me at the time he was before the board and afterwards I wrote it up.

Q. Was that the only record that was made of anything that Mr. Carney did?—A. Yes, sir.

Q. Before the board?—A. Yes, sir.

Q. Was he present and saw that before it was put in typewriting?

Mr. ADAMS. I object to the question upon the ground that it is leading, and take an exception to the mode of examining the witness. He seems to be

abundantly able to take care of himself and tell what occurred without counsel telling him what occurred and then asking him to say yes or no.

The WITNESS. He was present and dictated it to me, as I say.

Mr. FRANKHAUSER (reading). "November 12. Protest of Mr. Robinson filed relative to Carmel Township.

"November 12. Protest of Mr. Robinson filed in reference to Sunfield Township."

Was that the same protest that I called your attention to here in your evidence, Exhibit 59?

The WITNESS. That is relative to Sunfield Township; yes, sir.

Mr. FRANKHAUSER (reading): "November 12. Protest of Dwight Backus relative to issuing a certificate of election to E. G. Pray. Filed. November 13, Claude S. Carney, Democratic candidate for Congress from the third congressional district, personally appeared before the board and requested the board to summon the inspectors of election of the township of Sunfield for the purpose of correcting and completing their returns for said township, basing his motion upon the affidavit of Rosslyn L. Sowers, attached to the protest of Sam Robinson, claiming that said returns should be corrected to read 'November 6th' instead of 'November 5th,' and claiming that said returns should show an adjournment was made, if such was a fact; and a like motion with reference to summon the board from Carmel for the purpose of showing whether a part of the count was made before the hour of 5 o'clock and while the voting was in progress in such township. This last motion is based on the affidavit of N. W. Spencer, which is attached to the protest of Mr. Robinson in relation to counting the votes of said township. This board, by unanimous vote, decided that the technicalities pointed out are not sufficient to warrant this board in summoning the board of election inspectors from the various townships to appear before this board."

Q. I don't know but the record shows what Exhibit 6 is, but state what it is?—A. "Canvass of the votes cast at the general election held Tuesday, the 5th day of November, 1912."

Q. What I read was a part of the proceedings of the board of county canvassers?—A. Yes, sir.

Q. You acted as deputy county clerk how long?—A. I couldn't tell you; I was first appointed under Mr. Hamilton.

Q. You acted how long as county clerk?—A. From November 4.

Q. You are an attorney at law?—A. Yes, sir.

Q. I ask you whether the protest of Mr. Robinson, Exhibit 59, with its companion, the township of Carmel, were such papers as were required to be filed in the office of the county clerk?—A. I don't know whether they were required to be filed or not; they were filed there and they were put in a jacket.

Q. You can remember that they were both filed?—A. Yes, sir.

Q. Something has been said about your career as a justice of the peace here; what they have been questioning you about happened 17 or 18 years ago?—A. Yes, sir.

Q. Since that time has the city of Charlotte elected you justice of the peace?—A. Yes, sir.

Q. How many times?—A. Twice.

Q. How many times have you been elected circuit court commissioner of this county?—A. Four or five times.

Q. Can you explain briefly what your trouble was before the board of supervisors, which resulted in the resolution produced here?—A. The question here involved in this report is to show that certificates of witnesses who appeared before the court; they claimed that the justice of the peace had no right to issue certificates to the complaining witnesses in the case.

Q. Was it true that you issued certificates that were illegal?—A. I think I never issued any illegal certificates.

Q. Did you ever issue a certificate for men who were in no wise present as witnesses and who were not subpoenaed?—A. I issued them to men not subpoenaed where they appeared and were sworn.

Q. In relation to holding court at the jail; what was there about that?—A. Sometimes for the convenience of the officers the justice of the peace went to the jail and arraignments were made instead of having the person brought before them.

Q. Was there any trouble about those fees in relation to allowing you fees when you sent a man to Detroit and you got them allowed when you sent them to jail?—A. The same class of cases exactly; where they were sent to Detroit they allowed the fees, but not when sent to the jail.

Q. Was that the only trouble?—A. Yes, sir.

Q. When they disallowed that bill the first time did you put it in the second time?—A. Yes, sir.

Q. You were not trying to get away from it?—A. No, sir.

Mr. ADAMS. I object to that as leading; the question suggests the very answer he wants every time and all the witness has to do is to say yes or no; it is not fair the way they are conducting the examination.

Q. How did you come to issue witnesses certificates who were not sworn?—

A. If they were in attendance at court I issued a certificate.

Q. If a man pleaded guilty he would not be sworn?—A. Sometimes they would not be tried and sometimes they would be used, even where they did plead guilty, but they were required to be in attendance.

Q. The circuit judge of this circuit, Clement Smith, where does he live?—

A. At Hastings.

Q. You have known him how long?—A. Twenty-five or thirty years.

Q. After this difficulty with the board of supervisors, did you act as clerk of the board of supervisors?—A. Yes, sir.

Q. In what capacity—what office were you holding then?—A. I was deputy county clerk.

Q. I show you Exhibit 64; what is that?—A. That is a letter from Judge Smith.

Q. Circuit judge?—A. Yes, sir.

Q. Is he judge of the circuit court of Eaton County?—A. Yes, sir.

Q. And has been for how long?—A. Twenty years anyway, and maybe longer.

Q. You have known him and have practised law before him all that time?—

A. Yes, sir.

Q. How long have you practised law; that is, how many years have you been admitted to the bar?—A. I think I was admitted in 1880, in July.

Mr. FRANKHAUSER. We offer Exhibit 64 in evidence.

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial and hearsay; it is self-serving.

Q. Do you know Judge Smith's writing?—A. Yes, sir.

Q. Is that his handwriting?—A. Yes, sir.

Mr. FRANKHAUSER (reading):

" BATTLE CREEK SANATORIUM,
" Battle Creek, Mich., November 2, 1912.

" JOHN C. NICHOLS, Charlotte.

" MY DEAR SIR: I have received and accepted the resignation of Ernest G. Pray as county clerk and register in chancery for Eaton County, to take effect the 4th instant. If you will accept the appointment for the vacancy I desire to appoint you. If you do, please prepare and send me a typewritten form for that purpose. It is not convenient for me to look up the statute and I leave it for you to do so. I will be here until next Tuesday morning, returning home by way of Charlotte.

" Yours, truly,

" CLEMENT SMITH."

Q. I show you Exhibit 64A—is that the envelope this letter came in that I have just read on the record?—A. Yes, sir.

Mr. MAYNARD. Can I ask a question or two of the witness?

Mr. ADAMS. All right.

Q. I show you Exhibit 25—what is that?—A. The tally sheet of the general election held Tuesday, the 5th day of November, 1912, in the second ward, city of Charlotte, county of Eaton, State of Michigan.

Q. Witness, have you had experience in these election polling precincts and counting up and tallying up of the votes received at the different elections?—A. Yes, sir.

Q. Do you know anything about how that is arrived at there under the heading of "Representative in Congress"? I will say that the contestant, by his attorney, introduced this book in evidence and read in front of the name of John M. C. Smith, straight votes, 65; total split votes, 50; total votes received, 161; without any explanation as to how those figures were arrived at, without mentioning the tallies, explain it fully.

Mr. ADAMS. I object to counsel stating upon the record anything that counsel said; the record will show what he said, if anything.

Q. Now, I want you to take that and show the manner in which those tallies—how it is done.

Mr. ADAMS. I object to the witness explaining anything except to tell what the record shows; the record shows for itself and it is a conclusion, speculative and incompetent, irrelevant, and immaterial, for the witness to offer to state anything that the record does not show.

The Witness. The system used in tallying the votes in the second ward is what is called the plus and minus system. They first spread the ballots cast into groups; if it is a straight Republican ticket a vote for all the officers on the Republican ticket, straight votes, those were taken for all of them that were marked at the head of the ticket; then what is called split votes; and that is true of each of the other parties.

Q. When separated that way, taking the Republican straight vote in one heap and the Republican tickets that are not straight in another heap, then set down for John M. C. Smith so many total straight votes?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and calling for the conclusion of the witness. He was not a member of the board or a clerk of the board at that November 5, 1912, election, and has nothing to do with this election.

The Witness. That is the way it was done. The total number of straight votes were set down.

Q. How many were there for John M. C. Smith?—**A.** Sixty-five.

Q. How many split Republican votes for John M. C. Smith?—**A.** Fifty-nine; those two numbers added together would be the entire number of Republican tickets voted.

Q. Just add them together and see how many there are?—**A.** One hundred and twenty-four.

Q. And every time he was voted against on the Republican ticket there would be one less?—**A.** Yes, sir; there would be one less.

Q. That was called what?—**A.** Minus.

Q. Were they set down?—**A.** Yes, sir; they were set down here.

Mr. ADAMS. I object to his saying they were set down there; there is nothing of the kind appearing on this record.

The Witness. The number of votes less in the Republican ticket were 8.

Q. That would leave him how many?—**A.** 116.

Q. Now, when they were reading the other tickets for John M. C. Smith, who received a vote on another ticket for that office, how would that be called—what would it be called?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and calling for the conclusion of the witness; he was not a member of the board and has no right to testify what occurred there.

The Witness. It would be called plus.

Q. How many of those plus votes, as shown on the record?—**A.** Forty-five.

Q. Now, that added to the amount we started in, that would make how many?—**A.** It would leave 161.

Q. One hundred and sixty-one?—**A.** Yes, sir.

Q. The total vote?—**A.** Yes, sir; the total vote he received.

Q. That was finally set down in the last column in that way?—**A.** Yes, sir.

Q. Do those tallies show opposite his name? Do you know in that way exactly how the right-hand figure 161 as the total vote was tallied and calculated?

Mr. ADAMS. I object to it as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness; the record must speak for itself; this witness was not a member of the board or a clerk, and don't know how it was counted.

The Witness. That is what it shows.

Q. Take the next name; what name is that under John M. C. Smith's?—**A.** Claude S. Carney.

Q. Give what that record shows about that.—**A.** He had 48 straight votes and 64 splits; he received plus 15 and a minus of 20.

Q. He was struck off 20 Democratic tickets?—**A.** Yes, sir; and he received 15 from other sources which made him a vote of 107.

Q. He was given that, was he?—**A.** Yes, sir.

Q. I wish you would glance through that book and see the number of Democratic votes for each office, the number of ballots cast for each one.—**A.** That is the way they were counted.

Q. How many were given each Republican?—**A.** Sixty-five straights and 59 splits; Democratic, 48 straights and 64 splits.

Q. According to that system they were given all the same credit?—**A.** Yes, sir.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness; that is not what the record shows at all.

Q. Now, Witness, what result did that have in the time it takes to count the ballots?—A. It shortens the time; for instance, at this election, in the second ward we were through counting and had the votes canvassed at 15 minutes to 9 o'clock, and the statements were made up and ready.

Q. Why was that?—A. Because of the shortening of the count.

Q. That is, you have to read the names actually marked?—A. Yes, sir.

Q. By the other system you have to read every name?—A. Yes, sir.

Q. If it has one mark on it?—A. Yes, sir.

Q. When you are reading the plus and minus system you mentioned, when you looked up the page, if there is but one name, that is all that is mentioned?—A. Yes, sir.

Q. If you took your Republican ticket and saw John M. C. Smith marked off and saw a Carney vote on that Republican ticket, and no other name altered on it, what would you have to say?—A. I would have to say "John M. C. Smith minus 1;" "Claude S. Carney plus 1."

Q. And laid the ballot aside?—A. Yes, sir.

Q. And every time you did that he got credit for the whole ballot?—A. Yes, sir.

Q. Which side was the minus side?—A. On the underside of the line and the plus above the line.

Q. How long have they pursued that system in the second ward?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

The WITNESS. With the exception of the time we had to string them on a string, I think, about 20 or 25 years.

Mr. FELLOWS. Do you know who instituted that system of counting?

The WITNESS. Yes, sir; Judge Maynard did.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

Q. You have seen and watched it a great many years?—A. Yes, sir.

Q. Is that an exact and correct method of estimating and obtaining the canvass of votes?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

The WITNESS. Yes, sir.

Q. Do you know whether the contestant or his attorneys, either of them, made any inquiry about this book before it was brought here to ascertain about that?—A. I don't know; I don't remember of their making any inquiry.

By Mr. FRANKHAUSER:

Q. Mr. Nichols, at the time of the canvass of the county canvassing board, what figures did they use, what returns did they use?—A. They used the statements that were returned to the county clerk from the various precincts except the second ward of Charlotte, then we used the tally sheet for the reason that the statement book was not in the envelope which was returned to the county clerk.

Q. Who made those figures in Exhibit 6 there?—A. Miss Lohr.

Q. Do you know of your own knowledge how many corrections the board made from her figures?—A. I do not.

Q. You are acquainted with her?—A. Yes, sir.

Q. State whether she is accurate in her work.—A. I supposed her so.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

Q. Now, did the board, in verifying those figures, use any other set of returns?—A. Than the ones coming from the judge of probate's office?

Q. Different from the ones coming from the county clerk's office?—A. The ones sent to the judge of probate or board of county canvassers.

Q. In comparing they used those?—A. Yes, sir.

Q. Now I ask you as clerk of the board, did you find any discrepancies in those duplicate returns—that is, the returns filed with the county clerk and those returned to the judge of probate?—A. I don't remember of any.

Q. You found none?—A. No, sir.

Q. Were all the returns presented there from the county clerk's office or the judge of probate's office?—A. Yes, sir.

Q. Were there any missing?—A. No, sir; none missing.

Q. Every one of them were there?—A. Yes, sir.

Q. Either from the county clerk's office or the judge of probate's office?—A. Yes, sir.

Q. Now I call your attention to some statements made in Mr. Carney's protest filed "after the said statements were sealed in their respective envelopes

shortly after said election and before the first meeting of the board of county canvassers said election inspectors unsealed said envelopes containing said statements and returns, as well also as said envelopes themselves were willfully and unlawfully broken and said statements removed from said envelopes and delivered over to various individuals, including John M. C. Smith and one John C. Davis, of Battle Creek, Mich., one of the Republican congressional committeemen and one of the political campaign managers for said John M. C. Smith in said district." Was that true as stated, as I have read it to you, as far as you know?—A. No.

Q. In what way?—A. The returns for the board of county canvassers were not opened in my office.

Q. But, assuming that Mr. Carney meant the returns to the county clerk's office, I will ask you whether they were delivered over to various individuals, including John M. C. Smith and one John C. Davis, of Battle Creek, except as they would be delivered to any person?—A. No, sir; no difference made; it didn't make any difference who came into the office and wanted to see them, they could see them.

Q. "That said parties interested in said election of the said John M. C. Smith were permitted, before the meeting of the said board of county canvassers, to remove several of said statements, on which the seals had been broken as aforesaid, from the office of the said county clerk, who was the legal custodian thereof." Is that true?—A. I never knew of their being out of the office; no, sir.

Q. "That among some of those that had some of those statements out of the office of the said county clerk was one William Smith, a son of John M. C. Smith." Was that true?—A. As far as I know, it is not true.

Q. Do you know of anybody carrying those returns out of the county clerk's office?—A. I do not.

Q. Congressman Smith himself; do you know of his having them at all?—A. I don't recollect that Mr. Smith was there at all.

Q. Did you ever see him in there looking them over?—A. I don't recollect that I did.

Q. Now I call your attention to some other statements he made here: "That said John C. Nichols, county clerk of Eaton County, unlawfully connived and conspired with the said John M. C. Smith and the said William Smith and the said John C. Davis and others interested in the election of the said John M. C. Smith." Was there any unlawful conniving or conspiracy on your part in relation to the election of John M. C. Smith?—A. Not a bit.

Q. "By unlawfully permitting the said statements to be manipulated as hereinbefore described, and aided therein even before the meeting of the said board of county canvassers." Was there any purpose on your part to allow these returns to be handled by Mr. Davis or William Smith or anybody else for the purpose of defrauding Mr. Carney out of his election?—A. No, sir; nor no one else.

Q. I call your attention to something in connection with your appointment as county clerk: "Your petitioner further shows that on, to wit, one day before said election, the said John C. Nichols entered into a scheme with one Ernest G. Pray, who was then county clerk of Eaton County, and said John C. Nichols secured his appointment as county clerk of Eaton County in his own name, which resignation was not to be made public until several days following his election." Did you enter into any scheme with one Ernest G. Pray to be appointed county clerk?—A. No, sir.

Q. "That said appointment of said John C. Nichols was secured for the purpose of promoting the interest of the said Ernest G. Pray as a candidate for the office of representative in the State Legislature of Michigan, and of John M. C. Smith as a candidate for the office of Representative in Congress." Is there any truth in that?—A. No, sir.

Q. "Which said appointment, by giving to the said John C. Nichols the custody of the election returns of the several boards of election inspectors for the various precincts in said county to the board of county canvassers, giving the said John C. Nichols an opportunity, by the use of his said secretly acquired office, to have access to the said sealed envelopes containing said election returns which were in his custody and care." I will ask you was there any connection whatever between your appointment as county clerk and the candidacy of John M. C. Smith as a Member of Congress?—A. No, sir.

Q. In the remotest degree, any connection whatever?—A. Nothing at all.

Q. Did you desire the appointment of county clerk so you could manipulate those returns in the interest of John M. C. Smith for Congress?—A. No, sir.

Q. Did you manipulate them in his favor?—A. No, sir.

Q. In any shape or form?—A. No, sir.

Q. Did John M. C. Smith ever ask you to work for him on election day there, or did he ever ask you to vote for him?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

The WITNESS. No, sir.

Q. Did he ask you to be appointed county clerk?—A. No, sir.

Q. As far as you know, did he know anything about you being appointed county clerk?—A. No, sir.

Q. "That the said John C. Nichols appeared before the board of county canvassers when said board of county canvassers actually met and acted as the representative of the said John M. C. Smith." Is that true?—A. No, sir.

Q. Did you do or perform any duties there except those which you were bound to perform as secretary of that board?—A. No, sir.

Q. Now, I notice Judge Adams asked you whether you, when the returns from the townships of Sunfield and Carmel that were asked to be brought in, you said no, not at that time; why didn't you want them at that time?—A. Because it would be better to work; we might just as well do the work without doing that that there was no question about.

Q. I call your attention to Mr. Carney's statement filed before the board of county canvassers that he made, that certain affidavits were sworn to as to certain of those votes, which affidavits are now in his possession; did he present any affidavits—the affidavit of Mr. Sowers or any other affidavit—except what has been shown here?—A. No.

Q. Were those the only two affidavits that were before the board of canvassers upon which Mr. Carney requested you to act?—A. Yes, sir.

Q. As a lawyer and secretary of that board, did you consider that Mr. Carney had before that board any statement of fact, as lawyers understand it, for that board to act on?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

The WITNESS. The affidavit in regard to Sunfield would not be anything; there would be a question about Carmel.

Q. What is the difference about Carmel?—A. I think in Carmel the person claimed to have personal knowledge of what occurred there.

Q. At any rate, all there was before the board of county canvassers was Mr. Sowers's affidavit and that other affidavit, as has been shown here?—A. Yes, sir.

Q. Mr. Sowers is a lawyer here?—A. Yes, sir.

Q. How many miles is it from Sunfield to Charlotte?—A. I think 20.

Q. He was himself a candidate for what office last fall?—A. Prosecuting attorney.

Q. On what ticket?—A. He was not a candidate at all, I guess; he was a candidate at the primaries.

Q. On what ticket?—A. On the Democratic ticket.

Q. For judge of probate, was it?—A. Yes, sir.

Q. I misunderstood it, I thought it was for prosecuting attorney.

(No answer.)

Q. All the information which Mr. Sowers pretended to have was contained in that affidavit?—A. That is what the affidavit states.

Q. And, of course, all Mr. Carney could know about it was what Mr. Sowers stated in that affidavit at that time; that is, Mr. Carney didn't claim that he had made any personal investigation?—A. I didn't hear him make any such claim.

Recross-examination by Mr. ADAMS:

Q. I suppose you know Mr. McPeck, an attorney here in Charlotte, Eaton County?—A. Yes, sir.

Q. He was prosecuting attorney of this county, was he not, at the time the county board of canvassers met after the November, 1912, election?—A. Yes, sir.

Q. He was the adviser of the board of county canvassers?—A. Yes, sir.

Q. He was there, wasn't he, a part of the time when the board was in session?—A. I saw him there.

Q. He told you what the situation was out in Sunfield and Carmel, didn't he, in the presence of the board?—A. Not that Saturday.

Q. If you will pay attention to my questions once in awhile we will get along first rate.—A. Not that Saturday; so I can't answer that.

Redirect examination by Mr. FRANKHAUSER:

Q. Something has been said about Mr. Pray, the county clerk, or former county clerk, carrying some ballots out of the second-ward polling place?—A. They were instruction ballots.

Q. You saw him carrying them away?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. You helped him carry them away, didn't you?—A. No, sir.

Q. Did you go away with him?—A. No, sir.

Q. When he took them away?—A. No, sir.

Q. Did you go with him?—A. No, sir.

Q. Where did he take them to?—A. I don't know; I know what he got them for, but I don't know where he took them to.

Q. Did you see him take them anywhere or put them anywhere?—A. I didn't see him put them anywhere.

Q. Now we will go back or forward, one or the two. Mr. Carney was before the board of county canvassers in the morning of the day he was before that board first?—A. Yes, sir.

Q. He was before that board after it had its noon recess that same day?—A. I think so.

Q. In the afternoon you had Mr. McPeek come before the board of county canvassers, didn't you?—A. I did not.

Q. Didn't you have anything to do with it?—A. No, sir.

Q. Did you know he was going before the board of county canvassers?—A. No, sir.

Q. You found he was there?—A. I know he was there.

Q. When you were there?—A. Yes, sir.

Q. There was no dispute there before the board of county canvassers about the situation in Sunfield, was there; that the board adjourned and had not quite counted the votes and went back there on the morning of the 6th and began counting again, was there, before the board of county canvassers?—A. I would not consent that that statement is true.

Q. You knew from your investigations that it was true at the very time Mr. Carney was there, didn't you?—A. No, sir; I did not.

Q. The facts were stated there by you and Mr. McPeek about that just as I have stated them, substantially?—A. I didn't know anything about it until afterwards.

Q. Didn't Mr. McPeek make the statement that he had investigated it and found that was the situation in Sunfield; that that election board adjourned about 1 o'clock in the morning of the 6th and left the voting place and quit their count and returned in half an hour or an hour after adjourning and began counting again?—A. I didn't hear any such a statement.

Q. You did not understand that to be the situation from your own investigation of it, did you, at that time when the matter came up before the board of county canvassers?—A. I had made no investigation at that time.

Q. You hadn't talked with anybody about it, had you?—A. No, sir.

Q. Mr. McPeek didn't make any statement to you about his investigation of that situation out there, did he, up to that time?—A. I don't think he did.

Q. There was no dispute before the board of county canvassers on that proposition, was there, or any contention or claim made there that the claim made by Mr. Carney about that matter there in Sunfield was not correct, was there, when Mr. Carney was there?—A. I don't know.

Q. You don't know?—A. I was not the board.

Q. Mr. McPeek was the man that the board had telephoned to on the night of November 5 or the morning of the 6th, and he telephoned back to them to go back and count those ballots; you understood that when Mr. Carney was before the board?—A. No, sir.

Q. You did not know anything about that at that time?—A. No, sir.

Q. Didn't know about it?—A. No, sir.

Q. You hadn't heard that Mr. McPeek did that up to that time?—A. Not until that affidavit was filed.

Q. When this affidavit was filed of Mr. Sowers, you found out about it then, did you?—A. I knew what the affidavit stated.

Q. You talked with Mr. McPeek about it, didn't you, to find out whether that was true?—A. No, sir.

Q. Didn't you talk with Mr. McPeek that day when Mr. Carney was before the board of county canvassers?—A. Yes, sir.

Q. You found out then that was the situation out in Sunfield substantially as Mr. Sowers stated in his affidavit, as far as the adjournment of the election board was concerned?—A. No, sir.

Q. You found out, didn't you, that the board didn't adjourn at all?—A. I didn't find out anything about it.

Q. You didn't find out that day from Mr. McPeek?—A. No, sir.

Q. You didn't find it out as he claimed?—A. Who claimed.

Q. Mr. McPeek, to you there and then.—A. He didn't make any claim to me about it.

Q. He didn't tell you he had been called up at night by somebody out there, and advised somebody out there in Sunfield to go back and count the ballots?—A. I didn't hear about that until afterwards.

Q. Didn't you hear that the day Mr. Carney was before the board of county canvassers? At that time, didn't you hear it from Mr. McPeek?—A. I don't think so.

Q. Will you say you did not?—A. I say I didn't hear it from Mr. McPeek.

Q. Did you hear it from anybody?—A. Yes, sir.

Q. Who?—A. Some talk on the street.

Q. It was not talked before the board of county canvassers?—A. I didn't hear it there.

Q. Now, then, basing your information upon your legal knowledge, in answer to Mr. Frankhauser's question, you stated that there was nothing before the board of county canvassers contained in the affidavit of Mr. Sowers that furnished any evidence to the board of county canvassers to call in the election board from Sunfield to correct its returns—is that true—but that you did find there was something in the affidavit of Mr. Spencer regarding the township of Carmel which furnished a basis for the board of county canvassers to call in the election board from Carmel?—A. I didn't say that.

Q. Was there anything in that affidavit of Mr. Spencer's filed with the board of county canvassers that furnished any basis for the canvass made in the election transaction there November 5, 1912, in Carmel township?—A. My attention was not called to that. My recollection is he claimed he had personal knowledge.

Q. Your contention was, I take it from your answer, that if the affidavit of Mr. Sowers had alleged any personal knowledge that your opinion would be that the board of county canvassers had a basis for calling in the board from Sunfield?—A. I think they would have.

Q. But based on the allegation of personal knowledge as far as Carmel was concerned, you didn't consider that furnished any basis for the board of county canvassers to call in the election board from Carmel?—A. I didn't think so.

Q. What was the matter with the affidavit of Mr. Sowers that the board could not act upon it and do what Sam Robinson requested?—A. I didn't say there was anything wrong with it.

Q. Nothing wrong?—A. I don't say that now.

Q. That furnished a basis—A. (Interrupting.) Wait a minute—

Q. I don't want any explanations.—A. I am not going to make any explanations, but I will state what I want to explain.

Q. Answer the question if you can.—A. You haven't any right to twist what I say, and I don't have to answer if you twist it.

Q. You had in your custody the affidavit—the original affidavit—of Mr. Sowers and the original affidavit of Mr. Spencer?—A. Yes, sir.

Q. What Spencer was that?—A. N. W. Spencer.

Q. They were filed with you as county clerk?—A. Yes, sir.

Q. They are conspicuous to-day by their absence?—A. They are.

Q. You have looked for them?—A. Yes, sir.

Q. You have looked for them in the county clerk's office?—A. Yes, sir.

Q. They were in your possession as county clerk of this county from the time you assumed the duties of the office up to the 1st day of January, 1913, were they not?—A. Yes, sir.

Q. They are gone?—A. I don't know.

Q. You can't find them?—A. They are not in the box where they are indexed.

Q. Have you looked anywhere else for them in the county clerk's office?—
A. Yes, sir.

Q. You couldn't find them?—A. I didn't find them.

Q. This affidavit of Mr. Spencer's according to your recollection, you say you can't find it, recited what as to the township of Carmel?—A. I couldn't state except the substance of it.

Q. In substance?—A. It alleged the fact that he was present at the polling place in the afternoon. I don't know how it was stated, but anyhow they made a count in the afternoon.

Q. What more?—A. That is all I can tell you.

Q. Is that all you can tell about it?—A. That is the substance of it.

Q. Well, what was the matter with having the board of county canvassers on that affidavit of Mr. Spencer's that he had personal knowledge of what occurred of having them come before the board of county canvassers and correct their return according to the facts set forth in that affidavit, anything that you know of?—A. I didn't question their right to have them come in.

Q. Why didn't you let them come in? Why were you opposed to having the election board from Carmel come in when Mr. Carney asked to have them come in and correct their returns, showing the facts?—A. I didn't oppose having them come in.

Q. Didn't you say you didn't want them to come in at that time, anyway?—
A. At that time.

Q. Was there any more objection to their coming in at that time than at some later time while the board was in session?—A. Yes, sir.

Q. If they were going to make any correction, was it not necessary to make the correction in the returns before they made their final canvass?—A. Yes, sir.

Q. That was the day that Mr. Carney was here before the board?—A. Yes, sir.

Q. When Mr. Carney was before the board you objected to the board of county canvassers having the election board from Carmel come in?—A. No, sir; I did not.

Q. Before the board of county canvassers in Mr. Carney's presence?—A. No, sir.

Q. You did object, did you?—A. To what?

Q. To the election board from Carmel coming in before the board of county canvassers at the time Mr. Carney was there?—A. Yes, sir; because he wanted the work stopped right there and not do anything until that was done.

Q. The board could have gone ahead with the canvass of the rest of the townships, could they not?—A. That is just what I wanted them to do, but Mr. Carney had to have everything stop there and do nothing until that board was in there.

Q. He asked the board to stop right there and do nothing?—A. That is the point exactly.

Q. And you wanted it to go ahead and then stop and go ahead and do nothing and then have the Carmel board come in?—A. No, sir.

Q. All that Mr. Carney asked before that board was this: That he wanted the election board of the township of Sunfield summoned before the board of county canvassers for the purpose of correcting and completing their returns for said township—have the returns corrected to read November 6 instead of November 5. That is true as far as Sunfield was concerned?—A. The answer is, No; that is not true.

Q. What Mr. Carney wanted with reference to Carmel was, he wanted the election board from Carmel summoned before the board of county canvassers for the purpose of showing whether a part of the count was made before the hour of 5 o'clock, while the voting was in progress in said township. He wanted that done with reference to Carmel, didn't he?—A. Yes, sir.

Q. Now, you say what I said about Sunfield was not what Mr. Carney wanted?—A. No, sir.

Q. Let's see. Mr. Carney, on the 13th day of November, 1912, appeared before the board of county canvassers and requested the board to summon the inspectors of election for the township of Sunfield for the purpose of correcting and completing their returns for said township, basing his motion upon the affidavit of Mr. Sowers, attached to the protest of Sam Robinson, claiming that such return should be made to read November 6 instead of November 5, claiming the returns should show that an adjournment was made, if such were the fact. That was what Mr. Carney claimed, was it not?—A. Yes, sir.

Q. That is correct this time, as I state in my question?—A. Yes, sir; but—

Q. Never mind—A. I don't care what you object to; I will tell you something—

Mr. ADAMS. I object to the witness stating anything except in answer to my questions.

The WITNESS. You don't know what your question was.

Q. I ask you whether I stated the facts there in the last question I put to you as to what Mr. Carney said upon that subject of Sunfield before the board of county canvassers at that time?—A. That is part of what he said.

Q. You wrote it down here in the record of the proceedings of the board of county canvassers, didn't you?—A. Yes, sir.

Q. You had it put in there just as Mr. Frankhauser read it on the record a while ago?—A. Yes, sir.

Q. From the minutes you took when Mr. Carney was before that board?—A. Yes, sir.

Q. He told you to sit down and take what he said, didn't he?—A. No, sir.

Q. You were butting in there, and he finally asked you whether you were not simply clerk of the board?—A. No, sir.

Q. He did not?—A. No, sir.

Q. You went and sat down like a good fellow, and did what your duty was to act as clerk rather than boss of the board of county canvassers?—A. He knows better than that.

Q. That is a fact, isn't it?—A. No, sir.

Q. Mr. Carney asked you who you were?—A. Yes, sir.

Q. What did you say?—A. I told him I happened to be clerk of the board—clerk of the county.

Q. What did he say to you?—A. Well—

Q. He told you that you had no voice nor vote there, didn't he?—A. Yes, sir; and I told him I knew it.

Q. Up to that time you had been trying to have a voice?—A. No, sir.

Q. You had been trying to induce the board of county canvassers not to have the boards of Sunfield and Carmel come in?—A. That is where you are wrong; that is not true.

Q. Your answer to the question is that is not true?—A. No, sir.

Q. After that request was made by Mr. Carney, as contained in Exhibit 59, after Mr. Carney made that request there before the board of county canvassers, did you have the election boards of Sunfield and the election board of Carmel township come in before the board of county canvassers before that board adjourned?—A. I didn't have anything to do with it.

Q. You didn't advise about it one way or the other?—A. No, sir.

Q. I understood you to say that no returns were missing—none of the returns in the different voting places?—A. Yes, sir.

Q. Then, you mean to say that there was a complete set of returns furnished to the county clerk's office?—A. I didn't say so.

Q. Was there?—A. No, sir.

Q. Now, what township did not have a complete set of returns to the county clerk of the election held November 5, 1912?—A. The only one I recollect was the statement from the second ward of the city of Charlotte.

Q. Were complete returns before the board of county canvassers from every precinct in this county?—A. Yes, sir.

Q. Complete returns?—A. Yes, sir.

Q. In the county clerk's office except as you have stated—all were filed in the county clerk's office except the one you have stated?—A. Now you are mixing up those that came from the county clerk's office and those from the judge of probate's office.

Q. I asked you about the county clerk's office?—A. If you are talking about the returns to the county clerk's office, I can answer that.

Q. Those were not in your office?—A. They were before the board of county canvassers.

Q. All right; up to the time, then, that the board of county canvassers got, if they did get, any returns from the judge of probate's office of that election?—

A. They were all there, with the exception of the statement from the third ward of the city of Charlotte.

Q. Mr. Nichols, I understood you to say that they got through sooner in the second ward than in the other wards?—A. Yes, sir.

Q. They only had 310 votes in the second ward?—A. I don't know the number.

Q. I will show you the poll book.—A. Yes, sir.

Q. Is not that true?—A. Yes, sir.

Q. In the fourth ward they had 425, didn't they?—A. Yes, sir.

Q. In the third ward they had 375?—A. Yes, sir.

Q. Is that right?—A. Yes, sir.

Q. Is the first ward the smallest ward in the city?—A. Yes, sir.

Q. They had 164 in that ward?—A. Yes, sir.

Q. At elections there are sometimes disputed questions come up irrespective of the number of ballots that are cast at that election that take the board a considerable length of time to decide?—A. I presume so.

Q. That might take the time of the board took in its work, in finishing its work longer?—A. Yes, sir.

Q. This second ward in the city of Charlotte you undertook to, or your attention was directed by Judge Maynard to Exhibit 25, the tally sheet book of the second ward of the city of Charlotte of the vote in that ward on the 5th of November, 1912? Now, I ask you to read all there is opposite the name, or the printed words, "Representative in Congress," on page 12 in this book with reference to John M. C. Smith and Claude S. Carney, just as it is on the book now.—A. (Reading:) "Representative in Congress. John M. C. Smith and Claude S. Carney, Levant L. Rogers and Edward N. Dingley." Opposite the name of John M. C. Smith, above a fine blue line, are 45 marks; below the fine blue line and above the pink line, I guess it is, there are 8. Opposite the name of Claude S. Carney, above the fine blue line, there are 15 marks and below it 20. Opposite the name of Levant L. Rogers, below the fine blue line, are 5 marks. Opposite the name of Edward N. Dingley, above the fine blue line, are three tallies, and below the line there are 25. On the line opposite the name of John M. C. Smith there are in figures 65, 59, and 161. Opposite the name of Claude S. Carney, 48—64—107; opposite the name of Levant L. Rogers, 3—12—10; opposite the name of Edward N. Dingley, 3—41—22.

Q. Now, that is all there is on that book in explanation of what you have just read, is it not?—A. Yes, sir.

Q. The explanation you gave Judge Maynard, when he examined you on this particular subject, was supplied by you and is not found in that book anywhere, is it?—A. No, sir.

Q. Or anywhere else in the election returns for that second ward, city of Charlotte?—A. No, sir.

Q. Is that true?—A. That is true.

Q. The figures you read, 65, 48, 3, and 3 are under the heading, "Total straight votes," page 13, of this same exhibit?—A. Yes, sir.

Q. The figures 59, 64, 12, and 41 are under the heading "Total split votes"?—A. Yes, sir.

Q. The figures 161, 107, 10, and 22 are under the heading "Total votes received"?—A. Yes, sir.

Q. You stated marks opposite the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley; those marks you refer to are strokes made on there, are they not, four strokes made and a line drawn across those strokes to show 5?—A. Yes, sir.

Q. Wherever that cross is?—A. Yes, sir.

Q. That is all there is on there in explanation of these figures, are those marks?—A. Yes, sir.

Q. All you gave in the way of explanation you supplied yourself?—A. Yes, sir.

Q. Outside of this record entirely?—A. Yes, sir; sure.

Mr. FRANKHAUSER. You mean strokes or tallies?

Mr. ADAMS. Yes.

Q. Now, when were you deputy county clerk first after January 1, 1895?—A. I would have to look it up; I don't know.

Q. Can't you tell approximately?—A. I couldn't tell approximately even.

Q. Under whom were you deputy county clerk after January 1, 1895?—A. I think George Becke.

Q. How long were you under him?—A. From the time I got my appointment until his term of office expired.

Q. How long was he in office?—A. Six years.

Q. What part of that six years were you deputy county clerk under him?—

A. Nearly all the time, I think.

Q. Who else were you deputy county clerk under since January 1, 1895?—

A. Mr. Moyer.

Q. How long were you deputy county clerk under him?—A. I don't know.

Q. Approximately.—A. From the time I was appointed until the expiration of his term of office; I couldn't tell you what length of time that was.

Q. Two years?—A. It would not be two years.

Q. Are those the only times since January 1, 1895, that you have been deputy county clerk?—A. No, sir.

Q. When else?—A. Under Ernest G. Pray.

Q. How long?—A. I couldn't tell you that.

Q. Approximately.—A. I couldn't tell you approximately.

Q. Mr. Pray was the last one you were deputy county clerk under?—A. Yes, sir.

Q. You can't tell us, approximately, he being the last one you were deputy under, how long you were deputy?—A. No, sir. From the time of the appointment until the 4th of November.

Q. A year?—A. I don't know.

Q. Can't you tell whether a year or not?—A. I am not going to make any guess; I don't know.

Q. Don't you know whether a year?—A. No, sir; the records will show.

Q. How long was he county clerk?—A. Four years.

Q. You can't tell us without the records whether you were deputy county clerk under Pray one year, can you?—A. I think I was more than that, but I am not going to say positively whether I was one year or three; the record will show; if I can have a chance to look I can tell you.

Q. He finished his term of office January 1, 1913?—A. He finished his office when he resigned.

Q. He finished his office just about November 5, 1912, within a day or two one way or the other of that date, didn't he?—A. Yes, sir.

Q. Mr. McPeck, prosecuting attorney, whom I referred to in my examination of you, was, during the campaign which ended November 5, 1912, chairman of the Republican county committee?—A. Yes, sir.

Q. There is nothing on that exhibit there, "25," that tally sheet book of the second ward of the city of Charlotte, that indicates, so far as Representative in Congress is concerned, the sources of the vote, is there?—A. Yes; there is to me; I don't know whether to you or not.

Q. Is there anything on the book that indicates—written out or anything else?—A. There is to me; I don't know whether there would be to you.

Q. Would you know, or anybody that would look at that book, unless they happened to know about the same, know what you say you know?—A. No, sir; that is true.

Q. What position do you hold in any of the local Republican organizations, or did you, during the fall campaign just prior to the November 5, 1912, election, if any?—A. Not any.

Q. Did you in the ward committees or anything?—A. No, sir.

Q. You were not a ward committeeman?—A. No, sir.

Q. In the last fall campaign?—A. No, sir.

Q. Did you hold any position with any of the ward committees or any of the county Republican committees or the county committee?—A. I didn't act with them at any time; I don't know whether my name appears on it or not.

Q. Now, there is not on that Exhibit 25 any plus or minus you were talking about to Judge Maynard?—A. There is to me.

Q. Is there anything shown on Exhibit 25 in the way of plus or minus there?—A. Yes, sir.

Q. Is there a plus or minus there in connection with the candidates for Representative in Congress?—A. Yes, sir.

Q. Show me a plus or minus on pages 12 or 13. I am asking you whether there is a plus or minus indicated by plus or minus characters there on those two pages.—A. Yes, sir.

Q. Where is the plus?—A. Above that fine line.

Q. Where?—A. Right along there.

Q. Show me the plus.—A. Take your glasses and look; all those marks are plus.

Q. What marks?—A. Right along there.

Q. You say there is a plus there?—A. All those marks above the line are plus.

Q. Is there a plus character—do you understand what I am asking you, or don't you?—A. Possibly not.

Q. You know what a plus character is, don't you?—A. Yes, sir.

Q. I ask you on your oath whether there is a plus character on pages 12 and 13?—A. There is no cross indicating a plus. You asked me, anything to indicate plus.

Q. There is nothing there; some of those tallies are above, some of the other tallies opposite the name of John M. C. Smith?—A. Yes, sir.

Q. Some of the tallies opposite the name of Claude S. Carney—are there some tallies opposite the name of Claude S. Carney?—A. Yes, sir.

Q. Is there a character minus there anywhere on those pages 12 and 13 of that exhibit?—A. No, sir.

Q. You say you did not issue any illegal certificates?—A. Yes, sir.

Q. Will you explain upon the record, if you did not issue any illegal certificates which were the subject matter of that investigation by the committee of the board of supervisors of Eaton County, why you agreed to pay back to the county of Eaton the moneys that the committee asked you to pay back?—A. It was the easiest way.

Q. It was the easiest way out of it?—A. Yes, sir.

Q. That is the only reason you did it?—A. Sure.

Q. That was the only reason that you left upon the records and files in the county clerk's office of Eaton County, Mich., the implication that you had been guilty of malfeasance in office and complied with the request of the committee to pay that money back into the Public Treasury, because it was the easiest way out?—A. Yes, sir.

Q. That is the only explanation you can make?—A. Yes, sir.

Q. Of your action?—A. Yes, sir.

Q. There was some talk, was there not, on the part of some of the Republicans of this county after the November 5, 1912, election, of contesting the election of drain commissioner?—A. I heard some talk of it when the board was in session.

Q. By the Republicans it was claimed that the Democrat was elected, was it not, and the Republicans were talking——

A. (Interrupting.) Yes, sir; by 6 votes.

Mr. FRANKHAUSER. We object to that as incompetent, irrelevant, and immaterial.

Q. The Republicans were talking of contesting the election of the Democrat for the office of drain commissioner?—A. Some of them.

Q. That was talked before the board of county canvassers?—A. I did not hear it before the board of county canvassers.

Q. You heard that before the board of county canvassers met?—A. No, sir.

Q. While they were in session?—A. I heard it while they were in session.

Q. This protest of Mr. Robinson's—there was some difficulty about the vote in Hamlin Township and the Republicans were claiming, and if they could throw that out they could elect a Republican drain commissioner?—A. I heard some claim; that never was in the protest filed.

Q. Mr. Robinson filed this protest against Sunfield while the board was in session?—A. He filed that protest while the board was in session.

Q. The Republican candidate for drain commissioner carried Sunfield, did he?—A. I would have to look at the returns to find out; I don't know.

Q. Suppose you look. Mr. Hunter was the Republican candidate for drain commissioner?—A. Yes, sir.

Q. He carried Sunfield by 25 votes, didn't he?—A. No, sir.

Q. What did he carry it by?—A. The difference between 252 and 196.

Q. Fred Milbourn, according to Exhibit 24, opposite the name of Mr. Hunter, it says votes received 252. He received 252 votes?—A. Yes, sir.

Q. And Mr. Milbourn received 196?—A. Yes, sir.

Q. So Mr. Hunter carried the township of Sunfield at the November 5, 1912, election, by the difference between 252 votes and 196?—A. Yes, sir.

Q. Now, in the township of Hamlin there was a delayed vote there and an adjournment, was there not?—A. No, sir.

Q. Did you understand there was at the November 5, 1912, election?—A. No, sir.

Q. A delayed count?—A. They didn't get through the count.

Q. What do you mean?—A. As early as some.

Q. Did they take an adjournment, as you understood it?—A. I don't know whether they did or not.

Q. That was the claim that the board had adjourned before they finished the count?—A. I didn't hear that claimed.

Q. You never heard that claimed before to-day, have you?—A. Yes, sir.

Q. When did you hear it first?—A. After the board of county canvassers was in session.

Q. You heard it then?—A. Yes, sir.

Q. The Republicans were talking of contesting the township of Hamlin on that account?—A. Some individuals were.

Q. That was talked of?—A. Yes, sir.

Q. You knew that at the time the board of county canvassers were in session that that was being talked of?—A. Yes, sir.

Q. And after Mr. Robinson filed this protest in reference to the township of Sunfield—the certified copy Exhibit 59—there was nothing further done about Hamlin, was there?—A. There wasn't ever anything done about it.

Q. Nothing was done about it?—A. No, sir.

Q. There was no claim made of contesting the election in Hamlin Township?—A. I didn't hear any claim made of contesting it.

Q. Well, you heard some talk about contesting it?—A. Yes, sir.

Redirect examination by Mr. FRANKHAUSER:

Q. You were deputy county clerk under Mr. Hamilton?—A. Yes, sir.

Q. When was that; do you remember?—A. Well, I know he was elected in 1892; I don't know how much before that or how much after.

Q. Since 1895 was Mr. Hamilton elected?—A. No, sir.

Q. This man Houser, one of the men who had trouble with the board of supervisors, what office does he hold now?—A. He is deputy auditor general.

Q. What office does Mr. Hamilton hold?—A. I think, State accountant.

Q. They are both State officers?—A. Yes, sir.

Q. How long have they been in?—A. Mr. Houser has been there better than 16 years and Mr. Hamilton about 16 years.

Q. Mr. Houser must have got his appointment soon after this trouble occurred as justice of the peace; did he?—A. Yes, sir.

Mr. ADAMS. I object to that and move to strike it out; there ought to be better evidence of it; and as hearsay and incompetent.

Q. Now, this vote for drain commissioner; Mr. Hunter received 252 in Sunfield and his Democratic opponent 79; now, I will ask you whether Sunfield is not Mr. Hunter's home?—A. Yes, sir.

Q. He lives there?—A. Yes, sir.

Q. Besides being an attorney here are you engaged in any other business?—A. I farm it a little bit.

Q. How many acres of land do you own in and around Charlotte?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and it is not the best evidence.

A. I own 360 acres besides some interest in some other land.

Q. You have some houses in town here?—A. Yes; and a couple of brick blocks.

Q. Store property?—A. Yes, sir.

Q. Since this matter with the board of supervisors how many years, as near as you can recollect, have you held public office—deputy county clerk, circuit court commissioner, and justice of the peace in Charlotte, in Eaton County?—

A. I was in eight years as justice of the peace, and circuit court commissioner eight years, I think.

Q. You were elected circuit court commissioner last fall?—A. Yes, sir.

J. H. BROWN, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Redirect examination by Mr. FRANKHAUSER:

Q. Mr. Brown, you live in Charlotte?—A. Yes, sir.

Q. How long have you lived here?—A. Twenty-six years the 1st of February.

Q. How old are you?—A. I am 54.

Q. What business are you in?—A. Well, I have been in the clothing business for 22½ years; since then I have been looking after my farm and in the real estate business.

Q. You are a Republican in politics?—A. Yes, sir.

Q. Were you chairman of the board of county canvassers on the November, 1912, election?—A. Yes, sir.

Q. Who were the other two members?—A. Mr. Little, of Grand Ledge, and Mr. Hawkins, of Charlotte.

Q. What are the politics of Mr. Little and Mr. Hawkins?—A. As I understand, the board stood two Democrats and one Republican.

Q. Have you ever served on the board of county canvassers before this last year?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. How many years?—A. I think this is my second term; I am not positive.

Q. How long were you elected for?—A. Two years at a time; and yet I am not certain about that.

Q. You have acted before?—A. Yes, sir. I have been on for several years.

Q. When the board of county canvassers met, what are your proceedings? First, I will show you Exhibit 6, under the head of "Certificate of determination." in the first line where the signatures are. Is that your signature?—

A. Yes, sir.

Q. Mr. Brown, where did you get the figures from which constituted the making up of this canvass Exhibit 6?—A. How do you want me to answer that?

Q. Who made these figures, and when were they made?—A. Well, I will say this: It has been customary before the board of county canvassers for the county clerk to first make up this book from the records returned to him these statements, and immediately upon the board convening we go to the judge of probate's office and get the other set of returns and bring them to the county clerk's office. We have always used the west room below, and we compare all the returns over the county from the different precincts; that is the first thing we do.

Q. Do you know who made the figures in Exhibit 6 in this book; they were made before the board met, you say?—A. I am not positive about that; no, sir.

Q. Who do you understand made them?—A. The county clerk.

Mr. ADAMS. I object to that as incompetent.

Q. Were there any changes made in those figures by the board?—A. Only two instances.

Q. Do you remember what those instances were?—A. I can recall one of them; the other I can't. In the case of Mr. Nichols, the circuit court commissioner; in the report—the tally sheets from one of the precincts—in carrying that out in the book they carried that out as 16; there was 10 difference. I don't know just the number of figures, but in the writing they were written in properly, and the footings were proper; but the book that showed the tallies—the second man and the man who checked—in that and some other minor office there were six; those were all the changes we made.

Q. Was that the county clerk's mistake or the mistake of the statement book?—A. That was a mistake in the statement book.

Q. How did they compare with the figures which you say came from the county clerk's returns?—A. They were exactly with the exception of that little error in the carrying out of the figures.

Q. Now, something has been said here about some returns that were missing at the time you gentlemen canvassed the votes; what was there about that?—A. To my knowledge there were none missing.

Q. By that you mean that there were none missing in either place—the county clerk's returns or the judge of probate's office?—A. Yes, sir.

Q. They were all there?—A. Yes, sir.

Q. The statement books and returns?—A. Yes, sir.

Q. Now, did you find any of them where the seals had apparently been broken?—A. I think there were a number from the judge of probate's office that were broken.

Q. About how many would you say were open?—A. Well, now, I wouldn't say for that; I think—I will not say how many; quite a number of them.

Q. Where did you get them from the probate office?—A. Out of the vault.

Q. Who got them?—A. The judge of probate.

Q. He went in and got them for your board?—A. Mr. Hawkins and myself.

Q. Where were they in the probate office?—A. In the vault.

Q. Is that a safe or a room—this vault?—A. It is a vault fixed up. He went and got them for us.

Q. What shape were they in when handed to you; in one bundle or more?—A. In one bundle.

Q. Did the judge of probate carry them out of the vault and hand them to you?—A. He did; yes, sir.

Q. In what way is that vault secured or capable of being secured?—A. Well, it has doors like safe doors.

Q. Wooden or metal doors?—A. Iron doors, I should judge—all over the courthouse; the same doors.

Q. What is kept in that vault as a rule?—A. All of the records of the probate court.

Q. The files and books?—A. Yes, sir; I suppose so.

Q. Who is the judge of probate?—A. L. J. Dann.

Q. Was he the same one that is now?—A. Yes, sir.

Q. He was a Republican?—A. Yes, sir.

Q. I wish you would give as briefly as possible the proceedings of your board there with reference to the congressional vote. What was done before your board by Mr. Carney or anybody representing him?—A. I don't know just what you want.

Q. Well, how many days were you in session?—A. I think three days.

Q. You met on the 12th, did you?—A. The first Tuesday after the election.

Q. Your book shows the day you adjourned; what day was that?—A. On the 14th.

Q. Were you in session three full days?—A. No, sir; we worked night and day; we worked nights—until 11 o'clock, I think, the first night.

Q. What did you work at?—A. Comparing the returns and getting them checked on the book.

Q. Now I will ask you this question: Suppose that the county clerk or anybody else had not tabulated those returns until you met and you had to tabulate the returns; what sort of a task would you have?—A. It would prolong our work at least one day.

Q. Do you think you could do it in one day?—A. I don't know; we never have done it.

Q. It has always been the custom, I understood you, for the county clerk to have them already tabulated when you met?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

Q. As far as your knowledge goes?—A. Yes, sir.

Q. Now, can you remember the filing of any protest before the board?—A. Two affidavits were filed.

Q. I will show you one of them, a certified copy here. I will show you Exhibit 59; look that over and see whether you ever saw a paper like that—that is, a certified copy of what we claim was filed. Who filed that?—A. Well, I think that is a copy of the affidavit.

Q. Was there one filed with reference to Carmel of a similar character?—A. There was.

Q. Similar in form?—A. Yes, sir.

Q. Do you remember who made that affidavit?—A. I think that was signed by Nathan W. Spencer.

Q. Are you acquainted with him?—A. Yes, sir.

Q. Where does he live?—A. In Charlotte.

Q. Votes in Charlotte?—A. He must have voted here.

Q. I will show you the last page of Exhibit 6. See whether you ever saw that—that is, on that page?—A. Yes, sir.

Q. Was it in that form when you signed the book there?—A. It was.

Q. Did you read that over and consider it?—A. Yes, sir; I dictated it. I dictated it to Mr. Nichols from a copy that Mr. Carney gave Mr. Nichols.

Q. Was it Mr. Carney's writing that you read from?—A. No, sir; Mr. Nichols's.

Q. You mean the paper Mr. Nichols wrote you dictated to the typewriter?—A. Yes, sir.

Q. Who wrote it off on the typewriter?—A. Mr. Nichols.

Q. In whose handwriting was the paper you read?—A. Mr. Nichols's.

Q. Was Mr. Carney there at the time?—A. No, sir.

Q. Did you see Mr. Nichols and Mr. Carney together when that paper was gotten up?—A. Mr. Carney sat by the side of me and dictated to Mr. Nichols what he wished to.

Q. Now, after considering that—I want to ask you whether Mr. Nichols in any way dictated or tried to dictate to the board of county canvassers about bringing in Sunfield or Carmel, one or both, of the board of inspectors?—A. He did not.

Mr. ADAMS. I object to that as incompetent and immaterial and as the conclusion of the witness; it does not state what the conversation was.

Q. Following that up, just tell what you remember that was said there by Mr. Carney, or anybody in his behalf in his presence, or by Mr. Nichols about bringing in those boards, if anything was said?—A. I don't exactly know what you want me to answer.

Q. Did you hear any talk between Mr. Carney and Mr. Nichols or Mr. Sowers there directly with Mr. Carney?—A. No, sir.

Q. If there was any talk that you remember of that was had there about bringing in those boards while Mr. Carney was present?—A. Shall I start back where Mr. Carney came?

Q. Yes.—A. Mr. Carney landed there in the morning, got off the morning train between 9 and 10 o'clock, and came into the room where we were canvassing the vote and introduced himself, and I introduced him to another member of the board, and he wanted to know what we were doing, and I told him we were compiling the vote. He said we didn't want to go any further until we recognized a couple of affidavits, and wanted to know whether a couple of affidavits had been filed, and I stated yes, and showed them to him, and he read them. He wanted to know whether we had taken any action on them and I told him we had not. He asked if we would, and I said yes, before the board adjourned. I think in the meantime he and Mr. Nichols had some little tilt and Mr. Nichols came inside in the window; it was some point I didn't know anything about.

Q. Were they points of law or fact?—A. I think it was points of law; and I think in the meantime Mr. McPeck came in.

Q. Who was he?—A. He was the prosecuting attorney; and I introduced Mr. McPeck to Mr. Carney and he and Mr. McPeck talked a few minutes, and Mr. McPeck says, "What is the disturbance," and they started in then and talked it over between themselves, and finally went out and we proceeded with our work. I think between 1 and 2 o'clock in the afternoon, not far from half past 1 o'clock, they came in again and Mr. Carney asked whether we had come to any decision, and we said no. He said he would like to go home on the 3.28 train and he wished we would take some action before he went, and we agreed to do it. Mr. McPeck, I think, and Mr. Carney went out in the other room and shut the door, and we talked the matter over and the board decided those protests were not sufficient for us to call the boards in.

Q. Did you decide that unanimously?—A. We did.

Q. Was there any member of the board who hung out and wanted them brought in?—A. Neither one.

Q. Was that all that occurred in reference to the protest?—A. After we decided that I said to Mr. Carney that I did not consider there had been any fraud, and then he took up the books and showed me they were dated the 5th when they should have been dated the 6th, from his idea.

Q. He didn't claim any fraud?—A. No, sir; he did not.

After that we called Mr. McPeck and Mr. Carney and Mr. Nichols in together and told Mr. Carney what we had ruled, and he asked whether it was the unanimous decision of the board, and we all said yes. He said he wished to make a little statement, and Mr. Nichols took down what he wished to say, and after that was done he went away.

Q. Was there any controversy between Mr. Carney and Mr. Nichols as to what that statement should contain when Mr. Nichols was writing it down?—A. I don't think so.

Q. After that you dictated to Mr. Nichols just as it was written down on the paper?—A. Well, Mr. Hawkins and I sat together when it was dictated.

Q. Do you know what became of that paper?—A. I do not; they were put in a jacket; all those affidavits; Mr. Carney's two affidavits; and that is the last I saw of them. They were already to file.

Mr. FRANKHAUSER. I will offer in evidence Exhibit 6, including what appears on the last page of the exhibit, and will use such parts of it as I may desire in the further progress of this contest. I will offer it in evidence, and will not take any more of it than we want when making up the final record. I offer the last page of Exhibit 6 and page 33, but I offer it all.

Mr. ADAMS. We object to such parts of it as do not relate to the office of Representative in Congress as irrelevant and immaterial.

Cross-examination by Mr. ADAMS:

Q. I understood you to say that Mr. Carney's affidavits were put in a jacket?—A. Yes, sir.

Q. Mr. Carney didn't file any affidavits there, did he?—A. Affidavits filed for him.

Q. Mr. Carney didn't file any affidavits there, did he?—A. I don't mean to say he did.

Q. What affidavits do you refer to? Tell me what affidavits you referred to when you say they were put in a jacket?—A. I referred to the affidavits that Mr. Robinson filed there of Mr. Sowers and Mr. Spencer.

Q. Those are the only affidavits you referred to?—A. Yes, sir; they were filed in a jacket.

Q. You don't know whether they were filed in the interest of Mr. Carney, do you, of your own knowledge?—A. Mr. Carney claimed they were filed there for him; that is what he stated to us.

Q. He simply referred to those affidavits when he appeared before the board that were already filed—the affidavits of Mr. Sowers and Mr. Spencer?—A. Possibly that is so.

Q. You don't know whether they were filed there by him in the interest of Mr. Carney or whether they were filed there because of a contest over some other officers, do you?—A. No.

Q. Don't you know there was talk of a contest over the office of drain commissioner?—A. No, sir; I did not.

Q. Well, you heard that, didn't you, while your board was in session, there was some talk of contesting the township of Hamlin?—A. Can I tell that my way? I don't want to do any arguing.

Q. Was there any talk there that you heard while your board of county canvassers was in session about contesting the vote of the township of Hamlin?—A. Not before us.

Q. Whether before you or while your board of county canvassers was in session; not so much while it was in session, but after it convened and before it adjourned had you heard of that?—No, sir; I heard this: I don't know what township, Mr. Carney said the day he was there he heard of those two, and he said he would file six or seven more, but he didn't do it.

Q. You decided that day that you did not consider there was anything in anything shown that would justify you in calling in the election boards of Carmel and Sunfield?—A. Yes, sir.

Q. Mr. Spencer, you were asked by counsel whether he was a resident and voter in Charlotte, was he?—A. He must have been; he moved in.

Q. He made an affidavit in reference to Carmel Township that was attached to Mr. Robinson's protest to your board of canvassers?—A. His name was at the foot of it.

Q. You raised the question before the board whether Mr. Spencer was qualified to make the affidavit setting forth the facts as claimed in his affidavit in reference to the township of Carmel while he was a resident and voter in the city of Charlotte?—A. Yes, sir; we did.

Q. That is, you took the position, because Mr. Spencer was a resident and voter in the city of Charlotte, that he had no right to make an affidavit of what occurred in the township of Carmel?—A. Yes, sir.

Q. And that was the reason why you took the position that there wasn't anything in reference to the affidavit of Mr. Spencer and the township of Carmel that justified you in calling the election board of Carmel down?—A. Well, now, you have a pretty long rigmarole; I don't know what you want.

Q. That was the reason you gave while your board was in session?—A. Not by me.

Q. Was not that the reason given by some members of the board? Didn't you take the position there, while Mr. Carney was there, that because Mr. Spencer had made that affidavit with reference to Carmel Township that there was nothing before the board, as far as Mr. Spencer's affidavit was concerned, that justified the board of county canvassers in calling in the election board of Carmel Township?—A. Yes, sir.

Q. You took that position because Mr. Spencer was not a resident of Carmel Township?—A. Yes, sir.

Q. You didn't consider, then, that any man who knew the facts, whether he lived in Carmel Township or whether he lived somewhere else, if he claimed to know what he was testifying about, was a competent man to furnish your board any evidence as to what that board in Carmel Township did at the November 5, 1912, election?—A. Yes, sir.

Q. Well, then, I understood you to say that the fact that Mr. Spencer, who was not a resident of Carmel Township, made that affidavit was the reason why you did not consider there was any evidence there before your board to act upon. Is that true?—A. I don't think I said that.

Q. Was not that the fact?—A. That was one reason for it.

Q. That was the reason you gave to Mr. Carney, was it not?—A. Well, the board—that was the decision of the board; I was not the whole works.

Q. Your board did decide it upon that ground, that because Mr. Spencer made that affidavit, although he recited in it what the facts were, because he was a

resident of Charlottle and was not a resident or voter in the township of Carmel Township when the election of November 5 was held, therefore your board was not justified in calling in the election board of Carmel Township before the board of county canvassers?—A. Yes, sir.

Q. You and Mr. Nichols did talk in regard to that matter while Mr. Carney was there, didn't you, in regard to calling in that board from Carmel Township?—A. I may have been; perhaps I did.

Q. You were the only ones, besides what Mr. Carney said there, to say anything on that subject until Mr. McPeck came in?—A. Well, we were the only ones that time.

Q. Mr. McPeck came in there about what time?—A. I think along half past 10 or such a matter—10 or half past.

Q. Mr. Carney did not get here until half past 10, did he?—A. I don't know when he came; he came in, I think, between 9 and 10 o'clock.

Q. Don't you know he did not get here until half past 10 o'clock?—A. I don't know; he may have been here the day before.

Q. Don't you know that he did not get into this city until half past 10 o'clock in the forenoon?—A. I don't know it.

Q. If he did not get in until half past 10, he could not have been before the board of canvassers before half past 10 that day, could he?—A. If he didn't get in here until half past 10.

Q. Mr. McPeck did not come in any time when Mr. Carney was there until you got back from your noon adjournment?—A. Yes; he did.

Q. He did?—A. Yes, sir.

Q. It was just before Mr. Carney went out?—A. He and Mr. Carney went out together. They talked there and went out.

Q. It was nearly noon when Mr. McPeck came in, was it not?—A. I don't think so.

Q. You said that Mr. Carney said there was no fraud in Eaton County?—A. I said so.

Q. You say now that he said before your board that there was no fraud in Eaton County?—A. I say so.

Q. Mr. Nichols advised your board there not to call in the board from Sunfield and Carmel, did he?—A. He did not, to my recollection.

Q. Not while your board was in session?—A. No, sir.

Q. You heard his testimony here, sat in the room when he testified to that?—A. Yes, sir.

Q. You heard what he said about that, that he advised you not to call that board in?—A. I heard him say so.

Q. You say that didn't occur?—A. I don't think so.

Q. Then you say that Mr. Nichols did not advise you?—A. I don't think he did.

Q. Mr. Carney asked Mr. Nichols at some stage in the proceedings there when Mr. Nichols was also present who he was?—A. Yes, sir.

Q. And who he represented?—A. That is not the way he said it.

Q. He asked him who he was?—A. Mr. Nichols sat in the window—

Q. I asked you if Mr. Carney did not say to Mr. Nichols in substance, Who are you?—A. No, sir; he did not.

Q. In substance?—A. I would not call it in substance.

Q. All right. Didn't Mr. Nichols reply "I am John C. Nichols, county clerk," or that in substance?—A. No, sir.

Q. Didn't Mr. Carney then say, in substance, "Well, Mr. Nichols, I am glad to find out who you are: you have no voice or no vote on this board"?—A. He didn't say that.

Q. In substance?—A. No, sir.

Q. Did you find an envelope in the judge probate's office containing the returns of the November 5, 1912, election from the township of Carmel?—A. Yes, sir; there were 25 envelopes and 25 returns.

Q. In the judge of probate's office?—A. Yes, sir.

Q. What did you find in the envelope, if there was anything in it in the judge of probate's office, in the returns from Carmel Township; what returns did you find in the envelope?—A. I am not positive what the envelope contained: I know there were—if I recollect they were not distributed as they should be; they were all in one envelope and part should have been in another envelope.

Q. The returns, in other words, what the law required to be in one envelope in some instances were not in the envelope at all, is that right?—A. If I remember right—I don't know as I can tell you exactly—if I remember right not only

in the judge of probate's office but the county clerk's office had a poll book in one envelope and the other had all the statement books in.

Q. That was not as you understood the law required?—A. Well, it was not anything very serious.

Q. That was not as you understood what the law required?—A. I don't know as I am positive what the law required.

Q. You understood what the law required?—A. I think a tally sheet and statement book should be in each place.

Q. That is the way you understood the law?—A. Yes, sir.

Q. You didn't find them that way?—A. Maybe not.

Q. Is it not a fact that there was no envelope in the probate judge's office from the township of Carmel?—A. No, sir; it is not.

Q. Is it not a fact that the returns that the county clerk presented here that were left in his possession after the board of county canvassers adjourned that there was no envelope in that lot or any other place returned from the township of Carmel?—A. No, sir; that is not a fact.

Q. What did you do with the envelope from the township of Carmel?—A. I don't know, but it was there when we canvassed the vote there—the envelope.

Q. Addressed to the board of county canvassers, care judge of probate or register of probate; you say there was such an envelope there?—A. Yes, sir.

Q. In the judge of probate's office from the township of Carmel before you when your board of county canvassers convened and went in and got those returns from the judge of probate's office?—A. Yes, sir.

Q. You say there was an envelope there addressed in the manner you have indicated from every voting place that existed in the county of Eaton on the 5th day of November, 1912?—A. Yes, sir.

Q. Do you find now among those envelopes before you, which have been produced by the county clerk of Eaton County, any envelope addressed to the board of county canvassers, care judge of probate or register of probate, Charlotte, Mich., from the township of Carmel, of the election of November 5, 1912?

Mr. FRANKHAUSER. We object to that as incompetent and immaterial.

Q. Will you please look through these and see whether you find such an envelope there?—A. I can look through if you want me to.

Q. If you please. Do you find one?—A. I don't find any there.

Q. You do not?—A. No, sir; I do not.

Q. I produce before you another batch of envelopes, addressed to the county clerk, containing the election returns of November 5, 1912, election, and ask you whether you can find among those any envelope addressed to the board of county canvassers, care judge of probate or register of probate, Charlotte, Mich.?—A. No, sir.

Q. You don't find any in that batch, do you?—A. Not to the judge of probate.

Q. Do you find any addressed to the board of county canvassers, care judge of probate or register of probate, Charlotte?—A. I understood you to ask me that and I said there was not any in this bunch, not to the judge of probate.

Q. Is it not a fact, Mr. Brown, that you and Mr. Hawkins, while your board was in session, when you were looking for those returns, after you had been to the judge of probate's office and gotten the returns that you did get, whatever you got there, out of that vault that you went back to the judge of probate's office and asked the judge of probate whether there was not an envelope there with the election returns from the township of Carmel?—A. No, sir.

Q. Or a missed envelope?—A. No, sir.

Q. Did you go back to find any more election returns after you got the returns in the first instance from the judge of probate's office?—A. No, sir; I did not.

Q. You are a Republican in politics?—A. Yes, sir; I never voted any other ticket.

Q. Your age is what?—A. I am 54.

Q. Your business is what?—A. I said I was in the clothing business for 22½ years, and have lived here 26 years the 1st of February.

Q. Mr. Hawkins was not the man who had been appointed regularly as commissioners are appointed, or officers rather, to act on that particular canvassing board, was he?—A. No, sir; he took the place of Mr. Bacon, in Sunfield, who was sick.

Q. You appointed Mr. Hawkins to act, did you?—A. I did not.

Q. Who did?—A. I will explain. He and Mr. Little came in the forenoon to the county clerk's office, we had been notified by Mr. Bacon that he was not able to be here, and he told us that we would have to fill the board, which we

have power to do, and Mr. Little, of Grand Ledge, stated to me, "We will have to get somebody," and I went to the front door, and Mr. Hawkins was coming in, and I asked him if he was very busy, and he said "No," and I says, "Come in the clerk's office," and I introduced him to Mr. Little and says, "Mr. Hawkins will help us out," and he did temporarily.

Redirect examination by Mr. FRANKHAUSER:

Q. Did your board call in Mr. McPeck?—A. No, sir.

Q. What talk did you have with Mr. Carney, or did you understand what the discussion was between him and Mr. Carney?—A. Well, I don't know that I would be able to do that; they talked about the law in regard to a few things.

Q. Discussed the legal propositions as you understood it?—A. Yes, sir.

Q. Now, Judge Adams in his cross-examination desired you to state just what occurred; I wish you would state what Mr. Carney did say when he said to Mr. Nichols "Who are you?"—A. Mr. Nichols sat in the window, and I think I said Mr. Carney was doing this talking, and Mr. Nichols said, "I will have to take issue with you," and he wanted to know what right he had to butt in, and Mr. Nichols said, "I am the county clerk of Eaton County, and we will not allow any man from Kalamazoo to come here and dictate to us how business shall be done in Eaton County." "I beg pardon," he says; "I am glad to know you are the county clerk; I beg your pardon."

Q. Did Mr. Carney tell him he had no voice and no vote?—A. No, sir.

Mr. FRANKHAUSER. Exhibits 65 and 28 are the statement books from the township of Carmel, and Exhibit 17 is the tally sheet from Carmel Township—in other words, the duplicate statement books from Carmel Township and one tally sheet—and are in an envelope marked "County clerk."

(Whereupon the hearing was adjourned until 9 a. m. Wednesday, Mar. 26, 1913.)

WEDNESDAY, MARCH 26, 1913—9 A. M.

H. A. HAMILTON, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Hamilton, where do you reside?—A. Second ward, city of Charlotte.

Q. County of Eaton, State of Michigan?—A. County of Eaton, State of Michigan.

Q. What is your age?—A. I will be 33 next month.

Q. What official position did you hold in this city on the 5th day of November, 1912?—A. I was alderman of the second ward.

Q. Do you still hold that office?—A. I do.

Q. How long have you been alderman of the second ward, city of Charlotte?—A. This is the end of my third year.

Q. How long have you served as alderman of this city?—A. Two years.

Q. Were you present at the general election held in the second ward of the city of Charlotte on Tuesday, the 5th day of November, 1912?—A. I was for part of the day.

Q. Did you officiate on the election board in that precinct that day?—A. I did.

Q. What part of the day?—A. From the time the polls opened at 7 o'clock until 12.30, perhaps.

Q. Who was the other alderman?—A. Mr. Claude Knowles.

Q. Is he now alderman of that ward?—A. He is not; no, sir.

Q. When did he retire?—A. About a month or six weeks ago he moved into the fourth ward and resigned his position on that account.

Q. He removed from the second ward?—A. Yes, sir; to the fourth.

Q. For his permanent residence?—A. Yes, sir.

Q. During the forenoon who composed the election board of the second ward of the city of Charlotte?—A. Claude Knowles and myself as inspectors, and Mr. Roy Preston and Herman Gulde as clerk, and Mr. Rogers.

Q. How many booths were there in that precinct?—A. Four booths.

Q. Which way did they set facing?—A. The booths ran east and west in the precinct.

Q. Where was this election held in that ward?—A. It was held in the basement corridor of this building—the courthouse.

Q. In what is called the lobby of the basement?—A. In what is called the lobby of the basement; yes, sir.

Q. How many doors are there on the west of the basement of the courthouse?—A. Two doors.

Q. How many on the east?—A. Two.

Q. Is there a corridor running from the northeast door to the basement?—A. To the northwest door of the basement, right straight through.

Q. From east to west?—A. There is; yes, sir.

Q. Is there a corridor running from the southeast door of the basement to the basement to the southwest door of the basement, right straight through the building?—A. Yes, sir; there is.

Q. Is there a door to the basement on the north side of the basement?—A. Yes, sir.

Q. Is there a corridor running from the lobby to that north door in the basement?—A. Yes, sir.

Q. Are those three corridors all the corridors there are in the basement?—A. Yes, sir; they are.

Q. Now, what was the railing that inclosed the booths?—A. There were two posts, one in the center of the lobby, and to one of those posts there was a wooden fence with two gates in it, then, stretched from the posts on each side, we had ropes.

Q. Those ropes formed a railing?—A. Yes, sir.

Q. Inclosing the polling place?—A. Yes, sir.

Q. Were the ropes on each side attached at the west end?—A. Yes, sir.

Q. And at the east end to these posts?—A. Yes, sir.

Q. Those were iron columns?—A. I think they were; yes, sir.

Q. The wooden fence at the east end of the booths were lashed to those iron posts; were they not?—A. Yes, sir.

Q. Now, was the wooden fence with the gates attached to it running north and south?—A. Yes, sir.

Q. Which end of that fence was it where the voters entered?—A. The voters entered at the north gate.

Q. So they went in on the north sides of the booths?—A. Yes, sir.

Q. Where did the voters have their exit from the voting place?—A. They passed through the booth and came out on the south side, and then went out from the polling place at the south gate. That would be the southeast corner of the polling place.

Q. What part of the work was assigned to Claude Knowles, the inspector?—A. Initialing the ballots and passing them out to the voters as they came in.

Q. Did you have a table near the entrance gate?—A. I did; yes, sir.

Q. At the northeast corner of the voting place?—A. Yes, sir.

Q. Where did he place the ballots when he had them initialed?—A. Why, they were on the table.

Q. As the voters came in, what did he do?—A. He ascertained their names and called out the names to the clerk and handed them a ballot.

Q. What did they do then?—A. They took their ballot and entered the booth, any one that happened to be vacant.

Q. Do you know or did you know or learn in any way during the time you were there of any voter that had his ballot marked for him?—A. I don't know of any voter having his ballot marked; no, sir.

Q. When the voter had prepared his ballot, what did he do then?—A. He folded his ballot and came out of the booth and handed it to me.

Q. Where did you stand?—A. On the south side of the booths.

Q. Toward the west end of the voting place?—A. I think about halfway.

Q. Did you see any challengers there for either party there in the place?—A. Yes, sir.

Q. Who?—A. I believe the challenger for the Democrats was Mr. F. M. Overmeyer. The Republicans for a time, I think, had Jim Payne, and I do not—but John C. Nichols acted for a time.

Q. Did you see anybody else but those two?—A. When Jim Payne went to dinner his father, Henry Payne, came and took his place while he went to dinner.

Q. Did either of your inspectors go to your dinner that day?—A. Yes, sir.

Q. Which one went first?—A. Mr. Knowles went first.

Q. What did you do while he was gone?—A. When he went away he left enough ballots initialed to supply the voters while he was gone, and I attended both ends; that is, I handed out the ballots to the voters and then passed on the other side of the booths and deposited them in the box.

Q. Did anybody else while you were there deliver any ballots to voters or take in any ballots—receive any ballots to be deposited in the box—but yourself and Mr. Knowles?—A. No, sir.

Q. When Mr. Knowles returned what did you do?—A. When Mr. Knowles returned I told him I had been sick all day, and if he could get C. R. Barber to come and take my place I would go home.

Q. What business is he in?—A. In the hardware business with his father.

Q. He is an old resident of Charlotte?—A. Yes, sir.

Q. Was that satisfactory to Mr. Knowles?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. It was.

Q. Did you then leave and go to dinner?—A. Yes, sir.

Q. What did you do when you returned about Mr. Barber?—A. When I got home I asked my wife—

Mr. ADAMS. I object to the conversation with his wife.

Q. You telephoned to him?—A. Yes, sir.

Q. And he came to your house?—A. Yes, sir.

Q. What was said?—A. I asked him if he would go and take my place?

Q. Did you tell him why?—A. I did.

Q. What did he say?

Mr. ADAMS. Objected to as irrelevant and immaterial, any conversation would be hearsay.

A. He said he had already had his dinner, and he could go and would go right away.

Q. Did he leave your place at once?—A. Yes, sir.

Q. Did you return again to the polls?—A. No, sir.

Q. Were you there when they counted up?—A. No, sir.

Q. Did you go to the polls again that day?—A. No, sir.

Q. What was the reason?—A. I went right to bed.

Q. Why?—A. Because I was sick.

Q. When were you taken sick?—A. The night before election.

Q. You were able to go the next morning when you did?—A. I wasn't hardly able; no, sir.

Q. You stayed as long as you could?—A. Yes, sir.

Q. When the votes were handed to you to deposit in the ballot box, what did you do with them?—A. I took the ballots and deposited them in the box.

Q. Did you make any announcement?—A. I called out the name to the clerk.

Q. Called the names to the clerk?—A. Yes, sir.

Q. And the number of the ballot?—A. And the number of the ballot.

Q. What did you do with the perforated corner?—A. I tore off the corner and deposited the ballot in the box.

Q. Did you see a man by the name of Towne about the polling place?—A. Yes, sir.

Q. More than once?—A. I am inclined to think he was in there more than once, but I will not be sure about that.

Q. Where, with reference to the voting place, did he live?—A. Well, he lived on the corner, just west of the courthouse.

Q. Was there any street between his house and the courthouse square?—A. Yes, sir.

Q. Were you here when Mr. Overmeyer was sworn for the contestant?—A. I was not.

Q. On which side were you located? All the time you were there, on which side of the voting booths were you receiving ballots?—A. On the south side.

Q. Did you at any time have a ballot of any description of any kind in your hand talking to any voter, while you were in the precinct, and explain how to vote for any particular candidate?—A. No, sir.

Q. Did you have a ballot in your hand and say to any man that day, "If you want to vote for John M. C. Smith make a mark here" or "Make a mark like that" or anything like that?—A. I did not; no, sir.

Q. Did you have a ballot in your hand and make any explanation to any voter as to how to mark his ballot? Did you make any such a remark on the 5th day of November, 1912, at that election?—A. No, sir.

Q. I think it was something in this language that Mr. Overmeyer testified that it was some old man; he didn't know what his name was and he did not remember how he was dressed, but he thought he had on a dark hat and a dark coat, and he stood by you and you had a paper in your hand—some kind of a paper—he didn't know but it was an instruction ballot, and that you were talking with him and told him if he wanted to vote for John M. C. Smith to mark his ballot so—anything of that kind stated?—A. I don't remember of any such a circumstance; no.

Q. Do you remember of any voter that day asking for any assistance in marking his ballot?—A. I don't remember of any such a thing; no, sir.

Q. Did you hear them ask for any sort of instructions?—A. I think some asked for instructions. I don't remember of any particular case.

Q. Or what instructions they asked?

Mr. ADAMS. Let him state the conversation.

A. Why, they would ask, perhaps, fellows that could not see very well, would ask which was the Republican column and which the Democratic column.

Q. Is that the extent of what you heard?—A. Yes, sir.

Q. Did you hear any man ask any member of the board at any time for instructions as to how to vote for any particular or specified candidate?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. I suppose that some of those fellows who asked which was the Democratic column and which was the Republican column asked you that question?—A. I don't remember that they did; no, sir.

Q. Well, did they ask? Who did they ask?—A. They asked Mr. Knowles, naturally, because he handed them the ballot.

Q. I don't care, naturally; I am asking you now what they did ask?—A. As far as I know, they asked Mr. Knowles.

Q. Did they ask Mr. Knowles?—A. So far as I know, they did.

Q. Did they ask anybody else?—A. Not that I know of.

Q. They didn't ask you?—A. No, sir.

Q. Did you tell any of them which was the Democratic column and which was the Republican column?—A. No, sir.

Q. You say that you didn't have a ballot and make some explanation to a particular voter there that day, to some one?—A. I did not.

Q. You are sure about that?—A. Yes, sir.

Q. You can't be mistaken?—A. No, sir.

Q. You said that you were on the south side of the booths when you received the ballots?—A. Yes, sir.

Q. How many fellows were presumed to act as inspectors there that day?—A. Two.

Q. You only had two inspectors?—A. That is all.

Q. You assumed to perform the duties of one of the inspectors so long as you were there?—A. Yes, sir.

Q. Mr. Knowles assumed to perform the duties of another inspector while you were there?—A. Yes, sir.

Q. Of course, you don't know anything of your own personal knowledge when you were not there, do you?—A. No, sir.

Q. Now, Mr. Knowles—when you were there—was on which side of the booths?—A. He was on the north side of the booths.

Q. When you were assuming to act as inspector, on which side of the booths were you?—A. On the south side.

Q. So the booths were between you and Mr. Knowles?—A. Yes, sir.

Q. You couldn't see what Mr. Knowles was doing and he couldn't see what you were doing?—A. Partially because Mr. Knowles was at the very east corner of the booth and I was about halfway on the south side.

Q. Do you mean to be understood on this record that when those booths were up and he was pretty well to the east end, you could see?—A. Clear to the east end.

Q. He was not on the east end, was he?—A. No, sir.

Q. You were about halfway up on the other side of the booths, and you want to be understood on this record that Mr. Knowles was in a position when he was sitting on that side of the booths that he was on that he could see you where you were on the other side of the booths?—A. I didn't say so.

Q. Do you want to be understood that way?—A. No, sir.

Q. As a matter of fact, he could not see what you were doing where he was located and performing his duties as inspector, could he?—A. I don't know whether he could or not.

Q. Don't you know that he could not?—A. No, sir; I don't know that he could not.

Q. Don't you know that it would be impossible for him to?—A. No, sir; I do not.

Q. You could see him, could you?—A. I could partially.

Q. What do you mean by partially?—A. I mean I could see him. I was in one position all the time and stood up part of the time, and when I did I could see what he was doing.

Q. You didn't stand up most of the time?—A. I couldn't say.

Q. Don't you remember?—A. I stood up part of the time.

Q. What part of the time did you stand up?—A. I couldn't say.

Q. You have no recollection of that, have you?—A. I recollect of standing part of the time?

Q. How long did you stand up, I ask you; have you any recollection how long you stood up?—A. No, sir.

Q. These booths were what kind of booths—wooden booths or canvas?—A. They were wooden frames covered with canvas.

Q. They had two doors, one on each side of them, didn't they, so the voter went in from one side and came out when he wanted to deposit his ballot through another door on the other side of the booths?—A. Yes, sir.

Q. They were about how high?—A. I should say the top of the booths were 6 feet from the floor.

Q. About 6 feet from the floor?—A. Yes, sir.

Q. The doors to those booths had springs on to pull them shut?—A. Yes, sir.

Q. So that they were supposed to be shut?—A. Yes, sir.

Q. Except when some one passed through?—A. Yes, sir.

Q. You couldn't see through those booths, could you, from one side to the other, unless the doors were open?—A. No, sir.

Q. There were how many booths, did you say?—A. Four.

Q. And they were attached one to another?—A. Yes, sir.

Q. The length of the four booths was about what?—A. I should say between 12 and 13 feet.

Q. So there were 12 or 13 feet between you and Mr. Knowles; that would entirely obstruct the view from one of you to the other?—A. No, sir.

Q. When the doors were shut and you were on one side and he on the other side of those booths?—A. The booths ran the other way; there was but one booth between Mr. Knowles and I—the booths ran the other way of the room.

Q. You were on the side of those booths, were you not?—A. Yes, sir.

Q. And Mr. Knowles was on the side of the booths?—A. Yes, sir.

Q. And to one end of the row of booths?—A. Yes, sir.

Q. And unless you both were, or one of you, put it that way, was at the end of the booth, or near the end of the booth, so you could look around the end of the booth and see the other fellow; you couldn't see each other, could you?—A. We were at the end all the time.

Q. You were on the side toward the end, but not right at the end?—A. Yes, sir.

Q. Those booths were about how thick—how far through?—A. A little better than 3 feet, about 2½ feet.

Q. You were half way up on one side of the booths most of the time, were you not, performing your duties?—A. Yes, sir; about that.

Q. You said this man Towne was in there a couple of times you noticed?—A. Yes, sir; he was in there at least once, and, I think, more than once.

Q. If more than once, how many times?—A. Well, as I remember it, he was in and out perhaps two or three times during the morning.

Q. He didn't stay there long?—A. No, sir.

Q. How long did he stay when he came in?—A. Perhaps 10 to 15 minutes.

Q. Then went out?—A. Yes, sir.

Q. Then Mr. Barber came down and acted in your place?—A. Yes, sir.

Q. You were not there when he went into the voting place and assumed to act?—A. No, sir.

Q. You don't know what he did there?—A. No, sir.

Q. You selected him on your own motion?—A. I did.

Q. You went to dinner at what hour that day?—A. About 12.30.

Q. You opened that voting place at what time in the morning?—A. Seven o'clock.

Q. Mr. Knowles went to dinner first?—A. Yes, sir.

Q. What time did he go to dinner that day?—A. About 11.30.

Q. Did he come back before you went to dinner?—A. Yes, sir.

Q. So that when Mr. Knowles was at dinner that day you handed ballots to the people who came in and wanted them?—A. Yes, sir.

Q. Then you went to the other side of the booths to receive the ballots?—
A. Yes, sir.

Q. So you left the ballots that Mr. Knowles had marked on the table where he placed them, did you?—A. Yes, sir.

Q. Then you went on the other side of the booths and received ballots from the voters and went and deposited them in the ballot box?—A. Yes, sir.

Q. You put them in the ballot box?—A. Yes, sir.

Q. There was nobody in charge of the ballots that were left on this table when you went over there to deposit ballots in the ballot box, was there?—
A. Nobody specially in charge; no, sir.

Q. You stated Mr. Overmeyer acted as challenger there that day while you were there?—A. Yes, sir.

Q. And that John C. Nichols acted?—A. I said I thought he did a part of the time; but I am not sure.

Q. Did he have any credentials from the Republican Party that you saw there that day—written credentials—to act as challenger?—A. No, sir; not that I saw.

Q. He acted as challenger, if he acted in that capacity, for the Republican Party?—A. Yes, sir; I suppose so.

Q. You know that to be so?—A. Yes, sir.

Q. Was Mr. Payne acting as challenger?—A. Yes, sir.

Q. What was his given name?—A. Jim.

Q. Did you see any written credentials that he presented there from the Republican Party to that board to be permitted to act as challenger there that day?—A. Yes, sir.

Q. Whose signature was attached to it?—A. I think the chairman of the city committee, Mr. Boyles.

Q. Mr. Payne went out and his father acted part of the time as challenger?—
A. While he went to his dinner.

Q. Did Mr. Payne's father have any credentials from the chairman of the city committee to act as challenger?—A. No, sir; not that I saw.

Q. You permitted him to act without credentials?—A. Yes, sir.

Q. Mr. Payne's father was also a Republican?—A. Yes, sir.

Q. Did anybody else act as challenger there that day while you were there?—
A. Not that I know of.

Q. John C. Nichols didn't make any claim in your presence that day that he was a challenger, did he?—A. No, sir.

Q. You are a Republican?—A. Yes, sir.

Q. And have been how many years?—A. Ever since I was a boy.

Q. You have been living in this community how long?—A. I lived in the city 22 years.

Q. When did Mr. Knowles move out of the second ward?—A. I think about six weeks ago; some time the latter part of January or the 1st of February.

Q. Was he living in the second ward on the 5th day of November, 1912?—
A. Yes, sir.

Q. A married man?—A. Yes, sir.

Q. And was November 5, 1912?—A. Yes, sir.

Q. Had a family and was keeping house?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Didn't Mr. Overmeyer have written credentials and present them to you as a challenger?—A. I didn't see any; no, sir.

Q. He was known as a Democrat?—A. Yes, sir.

Q. He came there and acted as that all day?—A. Yes, sir; as far as I know.

Q. While you were there?—A. Yes, sir.

Q. As far as you know, he hadn't any written authority to do that?—A. No, sir.

Q. You accepted his word for it?—A. Yes, sir.

Q. Was there anyone challenged voters while you were there?—A. No, sir.

Q. As long as you were there nobody called upon any challengers to challenge any voters?—A. No, sir.

Q. They were all legal voters who presented themselves there while you were there?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. While Mr. Knowles was out and you were around on the north side of the booths, the ballots on Mr. Knowles's table were on the other side?—A. Yes, sir.

Q. So when you passed out those ballots to the voters you got them at the table where Mr. Knowles left them?—A. Yes, sir.

Q. Then you went around the booths to the ballot box on the other side of the booths from where you got those ballots to give to the voters?—A. Yes, sir.

Q. About where was the ballot box located during that noon hour when Mr. Knowles was away with respect to the booths; about in the center of the line?—A. I should say a little to the east of the center.

Q. How much to the east of the center would you say?—A. I should say perhaps opposite the second booth from the east.

Redirect examination by Mr. MAYNARD:

Q. Were those ballots numbered consecutively?—A. Yes, sir.

Q. When you passed out a ballot to a voter, how did you exhibit it to him; what announcement did you make to the clerks?—A. I gave his name and the number of the ballot.

Q. What announcement did you make then when they gave it to you?—A. I afterwards announced the name and number of the ballot.

Q. As you received it?—A. Yes, sir.

Q. For what purpose was that announcement made?—A. To verify the clerks' record.

Q. And tell whether the same ballot or not?—A. Yes, sir.

Q. Was there any break in the number as you passed around there?—A. No, sir.

Q. You don't think any man gobbled a handful and run away from there, do you?—A. No, sir.

Q. Neither one nor more?—A. No, sir.

Recross-examination by Mr. ADAMS:

Q. You are sure the ballots were all numbered, each and all?—A. Yes, sir.

Q. What number did you begin with?—A. One.

Q. What did you end with?—A. I couldn't say.

Q. What did you end with when you left there?—A. I couldn't say.

Q. You say you looked at the numbers?—A. Yes, sir.

Q. Don't you remember about how many ballots had been folded when you left?—A. I don't recollect; no, sir.

C. R. BARBER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Barber, where do you reside?—A. Second ward, Charlotte.

Q. In the city?—A. Yes, sir.

Q. What is your age?—A. I am 34.

Q. Are you a married man?—A. I am.

Q. Do you hold any official position in the city of Charlotte at the present time?—A. I am alderman from the second ward.

Q. Are you related to the last witness?—A. He is my brother-in-law.

Q. Is Mr. Hamilton the husband of your sister?—A. Yes, sir.

Q. How far do you live apart in the second ward?—A. The backs of our two houses come together.

Q. How long have you lived in the second ward?—A. I have lived there since the 1st of last May.

Q. How long have you lived in the city of Charlotte?—A. This last time I have lived here about two years.

Q. Where did you live prior to about two years ago?—A. Sault Ste. Marie, Mich.

Q. What was your business there?—A. I was in with a hardware company there.

Q. In what capacity?—A. I was manager of the wholesale end of the business.

Q. What firm?—A. The Soo Hardware Co.

Q. How long did you remain with them?—A. I was with them five years.

Q. Did you leave from that place to come here?—A. Yes, sir.

Q. What inducement did you have to come here? What job did you obtain here?

Mr. ADAMS. Objected to as irrelevant and immaterial.

A. I came here to go into the hardware business with my father

Q. They didn't discharge you up there, then?—A. No, sir.

Q. Did you ever live here before you went to the Soo?—A. Yes, sir.

Q. How long?—A. About 25 years; I couldn't tell you exactly.

Q. Are you a graduate of our schools here?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. Were you present at the general election held in the second ward on the 5th day of November, 1912?—A. I was part of the time.

Q. What part of the day were you there?—A. Well, I was there twice; I was there to vote in the morning and was there in the afternoon.

Q. What time did you vote in the morning?—A. Well, I couldn't tell you that; it must have been somewhere along 9 or 10 o'clock, I think.

Q. Did you return to the polls again?—A. I did.

Q. Were you here when Mr. Hamilton gave his testimony?—A. I heard part of it, not all of it.

Q. About what time did you go to the polls?—A. About 1 o'clock in the afternoon.

Q. Did you see Mr. Hamilton before you came to the polls?—A. Yes, sir.

Q. Whereabouts?—A. At his home.

Q. Did he make any request of you there?—A. He requested me to go to the polls and take his place.

Q. Did he give you any reason for it?—A. He said he was ill.

Q. Did you go right down?—A. I did within a few minutes.

Q. Had you been to dinner when you saw him?—A. I think I was at dinner at the time I was called.

Q. You think it was about 1 o'clock or nearly that when you came down?—A. It was not more than a few minutes either way.

Q. What did you do after you got down to the polls?—A. I went to where Mr. Knowles was and asked him what he wanted of me.

Q. Was he in charge of the polls?—A. Yes, sir.

Q. Was there any oath administered to you?—A. Yes, sir.

Q. By whom?—A. By Mr. Knowles.

Q. He was one of the aldermen?—A. Yes, sir.

Q. What did you do then?—A. He sent me over on the south side where the ballot box was to receive ballots as voters came in through the booths.

Q. Did you commence to perform that duty?—A. Yes, sir.

Q. How long did you continue it?—A. Until the polls closed.

Q. Did you absent yourself from the polls at any time that afternoon?—A. I did.

Q. Who was in charge when you left?—A. Mr. Knowles.

Q. Where did you go, to the urinal?—A. I went for a lunch a little before 5 o'clock?

Q. Who was in charge?—A. Mr. Knowles.

Q. Were you there when the polls closed?—A. Yes, sir.

Q. What time did the polls close?—A. At 5 o'clock.

Q. When the polls closed what did they do?—A. Do, you mean the booths?

Q. Yes.—A. Well, we shoved the booths to the south side of the inclosure, I believe, and we brought in a table, or had it brought in, and proceeded to open the box and count the ballots.

Q. Who were present?—A. Well, there were present the two inspectors, Mr. Knowles and myself; and the two clerks, Mr. Preston and Mr. Gulde; and the two gatekeepers, Mr. Rouse and Mr. Rogers; and, I believe, a few people outside of the inclosure.

Q. Did you see Mr. Towne there at that time?—A. I couldn't say I did at that time.

Q. Did you at any time during the evening?—A. Yes, sir.

Q. What was done with the ballots that were not voted?—A. They were lying on one of the tables; we had two or three tables in there.

Q. Do you know what was finally done with them?—A. My recollection is that they were rolled up and tied with a piece of string and put in the box.

Q. Rolled?—A. Yes, sir; rolled.

Q. Do you know whether that was before you completed the count or not?—A. I think it was after.

Q. Now, witness, how did you conduct that count; what did you do first there?—A. The first thing we did was to divide them into straight tickets and split tickets—into Republican straights and Democratic straights and so on, according to the party.

Q. How did you determine the Republican straight tickets?—A. If there was no mark on the ballot, except a blue pencil mark in the circle under the Republican head, we called it a Republican straight ticket.

Q. If there was a mark on any candidate what did you call it?—A. A split ticket.

Q. That is, if marked at the head of the Republican ticket and any official marked off, you called that a Republican split ticket?—A. If there was a mark at the head of the Republican ticket and a mark before a candidate's name on any ticket we called it a split.

Q. It was only a straight ballot all around that you called a straight ticket there—either party?—A. If it had no marks on it we called it a straight ticket.

Q. When you got them separated, for instance, the Republican straight tickets into one pile and the Republican splits into another and the Democratic straight tickets in one pile and the Democratic split tickets into another heap, what did you do?—A. We counted the straight tickets.

Q. And gave what? Who did you give credit to when you counted the Republican straights; what did you do with the amount?—A. They were given to the clerks and tallied on the tally sheet.

Q. There was given to each candidate on the Republican ticket credit for those?—A. For the number we had.

Q. Then did you count the Republican splits and ascertain the number of them and give them to the clerks?—A. I don't know whether we counted the Republican splits immediately after.

Q. I mean taking the Republican ticket. I am dealing with that alone. Was that done at some time?—A. Yes, sir.

Q. Then did you do that with the Democratic ticket—treat them in the same way?—A. Yes, sir.

Q. And each party ticket the same way?—A. Yes, sir.

Q. When you got ready to read the split tickets each candidate upon the Republican ticket had credit for all the Republican votes that were cast there, straight or split?

Mr. ADAMS. I object to that as leading. The questions are all leading, substantially asking the witness to say yes or no, and I object to that mode of examining the witness, to this question, and the leading questions given before.

A. As far as I know.

Q. Were they announced to the clerk?—A. Yes, sir.

Q. Did each candidate on the Democratic ticket have credited to him his total straight and split Democratic tickets?—A. As far as I know, he did.

Q. You announced them?—A. Yes, sir.

Q. Was that done with each candidate in the same way?—A. Yes, sir.

Q. Then what did you proceed to do?—A. Do I understand that question after all the ballots were counted and called to the clerks?

Q. Yes.—A. I believe then, or during that time, we had counted and called the number of ballots on the constitutional amendments and the woman-suffrage question.

Q. Did you read the split tickets?—A. They were read; yes, sir.

Q. Who read them?—A. Mr. Knowles.

Q. Did anybody else read?—A. I think not; I have no recollection of anyone else reading.

Q. He read them all?—A. I think so.

Q. Was there anyone there during the reading of those split tickets that examined or looked over or kept watch as to whether they were read correctly or not?

Mr. ADAMS. I object to that as calling for the conclusion of the witness and as incompetent.

Q. Or who had the opportunity to watch?

Mr. ADAMS. He may have had an opportunity; it depends upon where he was. I have no objection to his telling what was done, but to draw his conclusions I object to on the ground that it is incompetent and calling for the conclusion of the witness and not for the facts. What occurred there and what was said?

(Last question read.)

A. Well, besides myself? I watched it, for one, and there were others inside of the railing.

Q. Who?—A. All the time or part of the time?

Q. Was Mr. Towne there some of the time?—A. He was there part of the time.

Q. Was there anyone else there?—A. Mr. Nichols and Mr. Overmeyer; that is all I happen to think of.

Q. Did you hear John C. Nichols say anything about the count of any of the ballots or raise any objection in any way as to how the ballots should be counted?—A. I heard him object once to a ballot as Mr. Knowles called it.

Q. Do you remember what it was?—A. I remember what office it was, it was on the office of circuit court commissioner.

Q. That is the office he was running for?—A. Yes, sir.

Q. What was the objection to it?—A. I don't remember the details, I think I was not looking at the sheet at that time, but I know he said they were giving him a ballot that he was not entitled to.

Q. He was running for the office of circuit court commissioner?—A. Yes, sir.

Q. Do you remember how that arose, what was there about it?—A. It arose from the fact that there were two or three candidates on the Republican ticket for the office, and I think only one on the Democratic ticket.

Q. He was not seeking to have that vote counted for him, you say?

Mr. ADAMS. I object to that as calling for the conclusion of the witness and as incompetent and not for what was said.

Q. State all you heard him say in respect to it.—A. Well, I couldn't state what his words were, but I know he called attention to the fact that it occurred to him anyway that it was not called correctly, and they were giving him a vote which he was not entitled to.

Q. Now, witness, during that whole evening did you hear Mr. Nichols say anything respecting the canvass or the count for Members of Congress of the third congressional district?—A. I have no recollection of anything.

Q. Did you hear him make any effort to try to influence the count of a vote for that office?

Mr. ADAMS. I object to that as calling for the conclusion of the witness and not for any conversation or anything that was done, and it is incompetent.

A. I have no recollection of anything of the kind.

Q. I show you Exhibit 26 and call your attention to page 16, read that certificate on that page.

A. (Reading:)

STATE OF MICHIGAN, *County of Eaton*, ss:

We do hereby certify that the foregoing is a correct statement of the votes given in the second ward of the city of Charlotte, county of Eaton, State of Michigan, at the general election held on Tuesday the 5th day of November, A. D. 1912.

In witness whereof we have hereunto set our hands, in said county and State, this 5th day of November, A. D. 1912.

C. R. BARBER,

C. S. KNOWLES,

Inspectors of Election.

Q. Is that your signature there?—A. Yes, sir; it looks like it, anyway.

Q. Don't you know whether it is or not?—A. I should call that my signature; yes, sir.

Q. Was this signed that night?—A. Yes, sir.

Q. After you went up there on the post as inspector at this election on the 5th of November do you know of any person being assisted in marking his ballot or having his ballot marked for him?—A. No, sir.

Q. Who were the clerks of that election?—A. Herman Gulde and Roy Preston.

Q. In reading off those ballots were there any votes omitted which were cast for Claude S. Carney?—A. Not that I know of.

Q. In reading those ballots were any ballots read for John M. C. Smith which did not appear on the ballots in his favor?—A. Not that I know of.

Q. When those ballots were being read, when the name of John M. C. Smith, for instance, was announced as plus John M. C. Smith for Congress, was that given in a loud voice?

Mr. ADAMS. I object to the question as leading and suggestive.

A. Yes, sir.

Q. What did the clerks announce, what did you hear them announce?—A. The clerks would call back whatever had been called to them.

Q. Both of them?—A. No, sir; one of them. I think Mr. Preston did, as I remember.

Q. Were the two keeping tally?—A. Yes, sir.

Q. When they were reading those ballots and when a minus for John M. C. Smith would come, that would mean a vote against him on the Republican ticket, would it not?

Mr. ADAMS. I object to that as leading, and I take an exception to counsel putting those leading questions. He has been doing it right along and is now suggesting the facts he wants to show, and I take an exception to this mode of examination as not being in accordance with the rules of evidence and is incompetent, irrelevant, and immaterial. It is deliberately done, apparently, because I have taken an objection and an exception time and again, but counsel continues the same course with the witness.

Q. What was the minus sign following any of these candidates; how did that come there?

Mr. ADAMS. I object to counsel assuming that there was any minus sign; there is no evidence of it as far as this witness is concerned, and it is leading and incompetent and an unfair examination.

A. Well, any candidate on the Republican ticket voted against on that ticket, there would be a minus sign after that candidate.

Q. Did any voter ask you for assistance there that day, or for any explanation about casting his ballot?—A. No, sir.

Q. I will ask you whether or not you heard at any time during that day at that election any electioneering going on in the voting place?—A. I did not.

Q. I will ask you whether or not you heard anyone that day in the voting place urge any voter to vote for any particular candidate for any office?—A. I did not; no, sir.

Q. Did you see John M. C. Smith, candidate for Representative in Congress, at that election on that day, present there during the day?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. Was John M. C. Smith in Charlotte that day?—A. I don't know.

Q. Did you see him in Charlotte?—A. I have no recollection of seeing him that day at all.

Q. Did you see him the day before?—A. I don't remember that I did.

Q. Did you see him the day after election?—A. Not that I remember of.

Q. You haven't any remembrance of that at all?—A. No, sir.

Q. You might have seen him, but you don't remember it?—A. Yes, sir.

Q. I call your attention to Exhibit 25, tally sheet book of the general election held November 5, 1912, second ward, city of Charlotte, especially to pages 12 and 13 thereof, and on those pages specially I call your attention to what appears on that book with reference to Representatives in Congress; there are opposite the names of John M. C. Smith and Claude S. Carney some strokes or marks, are there not?—A. Yes, sir.

Q. Now, those are little black strokes made with ink in each instance, about a quarter of an inch long?—A. Yes, sir; they are.

Q. There are four of those strokes, and then there is one stroke about the same length across the four to indicate evidently that there were five votes wherever that appears there?—A. Yes, sir.

Q. There are numerous little squares where those strokes are made, and in the various squares on this page there is no stroke across?—A. No.

Q. Now, I wish you would examine that; you have pretty good eyes?—A. Yes, sir.

Q. You don't have to use glasses, do you?—A. No, sir.

Q. I want to have you examine that now and tell me whether you can see there any indication of a plus sign or a minus sign opposite the names of John M. C. Smith and Claude S. Carney.—A. Do you mean plus and minus characters?

Q. Yes, sir.—A. No, sir; I don't see any.

Q. There is no indication on there that there has ever been on those pages of the book any plus or minus signs there where the names of John M. C. Smith and Claude S. Carney appear, is there?—A. I can't see any indication of those characters ever having been there.

Q. Did you sign any oath that day before or after you assumed to perform the duties of inspector in that ward?

Mr. MAYNARD. I object to that as incompetent, irrelevant, and immaterial, and not required by the laws of the State of Michigan.

A. I believe I did.

Q. What did you sign it on?—A. I couldn't tell you now; I don't remember.

Q. On some book?—A. I said I didn't remember.

Q. Don't you now, to refresh your recollection, recall that you did sign such an oath on some election book that you had there?—A. I believe that I signed such an oath; yes, sir.

Q. On some book?—A. I presume it was on a book, but I don't know.

Q. Now, I suppose you saw the certificate or oath that Claude S. Knowles signed there while you were in that election that day, did you?—A. I may have seen it.

Q. Do you recall whether you did?—A. No, sir; I do not.

Q. I suppose that you saw the same oath that Mr. Hamilton signed that day?—A. I have no recollection of seeing it.

Q. Your initials are C. R.?—A. Yes, sir.

Q. Who swore you—who administered the oath to you?—A. My memory is that Mr. Knowles did.

Q. Did he swear you as soon as you got there—went there, I mean, to take Mr. Hamilton's place, before you did anything?—A. My memory of it is that he did.

Q. Do you remember what the form of the oath was that he administered to you?—A. I don't remember it; no, sir.

Q. Did he ask you to hold up your right hand?—A. I believe he did.

Q. And you did?—A. Yes, sir. I know something about the form of the oath, but I don't remember it from that day particularly.

Q. Where was Mr. Knowles standing when he administered the oath to you?—A. As I remember it, he was on the north side of the booths, near the table he was using—perhaps seated at the table.

Q. How close did you stand to him when he administered the oath?—A. I couldn't tell you.

Q. You didn't take any oath before Mr. Knowles at all?—A. I said according to my memory I did.

Q. You have a pretty good recollection?—A. Ordinarily good, I guess.

Q. I show you Exhibit 15 and call your attention to page 2, and ask you whether to that second certificate that is your signature?—A. Yes, sir.

Q. I notice you were sworn before Frank Towne?—A. Yes, sir.

Q. You were not sworn before Mr. Knowles, then?—A. I believe I said I thought I was, according to my memory; I don't think I said I was positively.

Q. You were mistaken about that, were you not?—A. Yes, sir.

Q. I notice that you didn't sign the certificate of the inspectors to this poll book, No. 15; you don't find your name there on page 16 of that exhibit, do you?—A. No, sir; I do not.

Q. Under that certificate?—A. No, sir.

Q. The only man's name that appears there to that certificate is Claude Knowles?—A. That is the only man there.

Q. What time did you get through with your work there on that board that day?—A. Something after 10 o'clock.

Q. At night?—A. Between 10 and 10.30.

Q. At night?—A. Yes, sir.

Q. Did you stay there until it was entirely completed?—A. I did.

Q. What was done with the ballot box or boxes?—A. When we left them? When we were through counting?

Q. Yes, sir.—A. We left them at the polling place when I went away.

Q. Who went away?—A. The entire board.

Q. You just left the ballot boxes right there?—A. Yes, sir.

Q. In the public corridors of the courthouse?—A. Yes, sir.

Q. You don't know what became of them after that, do you, that night?—A. Yes, sir; I know what became of them. I am satisfied in my own mind. I can't swear what became of them; no.

Q. I am asking for your knowledge.—A. All right.

Q. The entire board went away and left the ballot boxes there in the public corridors of the courthouse?—A. Yes, sir.

Q. How many ballot boxes, by the way, did you have there that day?—A. Two.

Q. Any more?—A. I saw no more.

Q. One of those ballot boxes you used to deposit in while you were there the ballots for the different candidates for the various offices?—A. Yes, sir.

Q. The other ballot box you used for depositing votes on the amendments and woman suffrage?—A. Yes, sir.

Q. You only used one box during all the time you were there for putting the ballots in for the different candidates?—A. That is all.

Q. You had there that day 310 votes in that ballot box in which you put the ballots for the different candidates, did you?—A. I couldn't tell.

Q. I will show you this same Exhibit 15 and ask you whether now, after looking at that exhibit to refresh your recollection, it is not a fact that there were 310 votes put in that ballot box for candidates for office?—A. Yes, sir; apparently.

Q. I am showing you the poll book.—A. Yes, sir.

Q. That you used there that day.—A. Yes, sir.

Q. Didn't you record on that book all the ballots that were voted there and went into that ballot box for the candidates in office?—A. Yes, sir.

Q. Well, now, after looking at that, is it not a fact that there were 310 votes cast there that day and put into that ballot box?—A. Yes, sir.

Q. Is it not a fact that you when you counted you counted 310, and that you found 310 ballots for candidates for office in the ballot box?—A. I know that the number contained in the ballot was correct and agreed with the number of the ballots.

Q. As a matter of fact, you only had 309 in the ballot box, didn't you?—A. That I couldn't say.

Q. Look right there at your returns and see whether that is not true?—A. Yes, sir; that is right.

Q. So that the returns that were made out there that night show that the whole number of votes cast according to the poll list was 310; that is shown by the returns, is it not? Look at page 16.—A. Well—

Q. (Interrupting.) Well, now, wait a minute. I say that Exhibit 16, which is the poll book of the votes cast in that precinct that you put in that day, shows that the whole number of votes cast according to the poll list was 310. Does it not show that there before you?—A. The total number of votes cast according to the poll list was 310.

Q. It shows, on page 16 of Exhibit 15, that the whole number of ballots counted on opening the ballot box was 309?—A. Yes, sir.

Q. It shows, on the same page of that same exhibit, that the whole number of ballots in excess of the number of electors voting and destroyed was 1?—A. That is what it says; yes, sir.

Q. And that was one of the returns that your board made to either the judge of probate or county clerk and signed it?—A. Yes, sir.

Q. That is the same exhibit on which your certificate or your oath appears which you say you signed, isn't it?—A. Yes, sir.

Q. When you got through with counting the vote what was the next thing you did there that night, if you can remember?—A. I think it was to total the various books that were to be handed in—the statement books, and so on, and sign them and put them in the proper envelopes and seal them.

Q. Did you read off there the number of votes for any of the candidates that you found claimed to have been cast that day while you were there?—A. Did we read them off?

Q. Yes, sir.—A. Yes, sir.

Q. Publicly?—A. Yes, sir.

Q. Who read them?—A. One of the clerks; I can't tell which one; perhaps both.

Q. You say that no voter asked for any instructions?—A. That is what I said; yes, sir.

Q. At any time?—A. Yes, sir.

Q. You were on one side of the booths when you were acting as inspector and Mr. Knowles was on the opposite side of those booths?—A. He was on the north side and I was on the south side.

Q. So the booths were between you?—A. Yes, sir.

Q. You stated that you didn't know of anybody calling for assistance there that day while you were there?—A. I don't remember of saying that; it is true, anyway.

Q. That is, you say it is true that you have no recollection of any voter having been in any way assisted?—A. I have no such recollection.

Q. That is, by assistance what do you mean?—A. By assistance some help in marking his ballot.

Q. Do you mean in going into the booth with him or outside of the booth?—A. Assistance. I think, would be in the booth.

Q. Do you know, then, of any assistance having been given to any voter there that day outside of the booths?—A. No, sir; I do not.

Q. Did any voter there that day ask how to mark his ballot?—A. Not in my presence.

Q. That might have been done on the other side of the booths and you couldn't hear it where you were?—A. Well, that would depend upon the voice.

Q. I suppose sometimes there were quite a few in there at one time around there?—A. Yes, sir.

Q. Sometimes were not the booths full—I mean a man in each booth?—A. Yes, sir; probably.

Q. While others were waiting to get into the booths to vote?—A. I think probably there were.

Q. Is not that your recollection that that did occur there several times during that day?—A. No, sir; my recollection is that we were not crowded for booths at all.

Q. Your recollection is that at no time were the booths all occupied?—A. I couldn't say whether there were four men in or not at one time.

Q. I suppose there were some people standing around there occasionally during the afternoon up to the time the polls closed who were not voting?—A. Yes, sir.

Q. Mr. Towne was there awhile after you began counting?—A. Yes, sir. I remember of his being there.

Q. What did you do when Mr. Knowles read off the ballots?—A. Well, part of the time, in fact most of the time, I was watching over his shoulder.

Q. The rest of the time when you were not watching over his shoulder?—A. I think perhaps he started to call those before the ballots had all been sorted and I finished sorting the ballots.

Q. So you were sorting ballots for awhile while Mr. Knowles was calling off from the ballots to the clerks of the election?—A. Yes, sir.

Q. It took you quite a while to sort those ballots?—A. Not very long.

Q. How long?—A. Perhaps just a few moments.

Q. Five minutes?—A. Yes, perhaps, and perhaps longer; I couldn't tell you exactly.

Q. You had to sort over three hundred and some ballots—A. (Interrupting). They were partly sorted when I began to count.

Q. Well, you didn't watch the count called off until you had them all sorted-out, did you?—A. No, sir; I think not.

Q. You sorted a few, then he began calling off, and while he was calling off you sorted some more?—A. Finished sorting.

Q. Now, you didn't keep any of the tallies, did you?—A. No, sir.

Q. Of course, you don't know just what was put down on the tally books of your own knowledge?—A. No, sir; not from my own knowledge.

Q. If you had a ticket marked at the head of the Republican column and you also had on that same ballot a mark for some particular candidate on the Republican ticket, what did you do with the ballot?—A. I can't remember that we had any such ballots.

Q. If you did have, what did you do with it?—A. I don't recall that we had any.

Q. If you did, what did you call it?—A. I presume a Republican split.

Q. You stated that John C. Nichols stated once that you were giving him a ballot that he was not entitled to?—A. Yes, sir; that is what he said.

Q. Did you give it to him?—A. I think not.

Q. Is it not a fact that you did give it to him?—A. I think not.

Q. Now, I ask you for the purpose of refreshing your recollection whether that very ballot was not given to John C. Nichols?—A. I think not; that is my recollection of it now.

Q. Mr. Nichols was around there all the afternoon while you were there?—A. No, sir; I don't think he was all the afternoon.

Q. He was there in the evening?—A. Part of the time.

Q. He was there part of the afternoon?—A. I don't remember of seeing him there in the afternoon at all.

Q. Was he there about 1 o'clock?—A. About 1 o'clock?

Q. Didn't you see John C. Nichols there at any time up to the time the polls closed?—A. I have no recollection of seeing him.

Q. That is as strong as you want to put it?—A. Well, I might have seen him, but I don't remember of seeing him.

Q. When you got through at night, what did you do with the election returns and books?—A. We sealed them in the envelopes.

Q. Well, did you see them sealed?—A. I did.

Q. How many envelopes did you have sealed?—A. Two, I think.

Q. What did you put in the one to the county clerk? The envelope addressed to the county clerk; was not one of them addressed to the county clerk?—A. yes, sir.

Q. What did you put in that one?—A. I could not state from my own knowledge what was put in that; I didn't put it in.

Q. Did you have one addressed to the board of county canvassers in care of the judge of probate or register of probate?—A. I believe we did; yes, sir.

Q. What did you put in that envelope?—A. That I didn't put in.

Q. Did you seal that one up?—A. Yes, sir.

Q. Who sealed it?—A. I couldn't tell you who handled the seal.

Q. Who took those returns when you went away from there?—A. I took the returns to the county clerk's office.

Q. That is, you took the envelope addressed to the county clerk and the envelope addressed to the board of county canvassers in care of the judge of probate or register in probate?—A. No, sir; I took the envelope to the county clerk to the county clerk's office.

Q. What did you do with the other one?—A. I left it with the ballot box.

Q. The ballot box and those returns you left in the public corridor of the courthouse when your board went away?—A. Yes, sir; when I went away.

Q. When you went away the board went away, is that true?—A. I don't know whether we all walked out together, we all left about the same time.

Q. What did you put in the ballot box, if anything, that night?—A. We put the ballots back in the box.

Q. What ballots?—A. All that had been cast and those that had not been cast.

Q. Was it sealed?—A. It was sealed.

Q. How was it sealed?—A. Locked and a strip of canvas put over it and a seal put on it.

Q. Who locked it?—A. I don't know, I think Mr. Knowles did.

Q. What was done with the key?—A. I presume he took it.

Q. Do you know?—A. I don't know.

Q. You said you went away once during the afternoon before 5 o'clock to get some lunch?—A. Shortly before the polls closed.

Q. How long were you gone?—A. About 10 minutes.

Q. No longer?—A. Might have been a little longer, very close to that.

Q. Where did you go, to a restaurant?—A. To a little restaurant just east of the Phoenix House.

Q. That is about a block from the voting place?—A. Less than half a block, I think.

Q. The courthouse stands in the center of the block?—A. A half a block or such a matter.

Q. The courthouse stands in the middle of the block, and there is a wide public street between the courthouse and the Phoenix House, and the restaurant is next to the Phoenix House on another street than the one that runs between the courthouse and the Phoenix House?—A. Yes, sir.

Q. How far from the corner where the Phoenix House is is it to the restaurant where you went?—A. The next door.

Q. Did Mr. Knowles go away from the voting place that afternoon?—A. He did; yes, sir.

Q. What time did he go away?—A. A few minutes before I did.

Q. How long was he gone?—A. Ten or fifteen minutes, perhaps.

Q. When he was away I suppose you handed out ballots and deposited them?—A. I think there were no ballots cast during the time he was gone. I have no recollection of any.

Q. You saw Mr. Hamilton at his home before you came down to act as inspector that day?—A. Yes, sir.

Q. Was at your home that you first got information from him that he wanted you to act for him?—A. He telephoned to my house in the first place, and I went over to see him.

Q. You were not selected by the voters down there in this polling place that day to act as inspector?—A. I don't know.

Q. There was no vote, no motion made there by any of the voters who happened to be present there at the time when you were there, that you act as one of the inspectors of that election; you didn't hear anything of that kind?—A. I heard nothing of that kind.

Q. When you went there to the voting place you were sworn right in and began to act?—A. I began to act at once; yes sir.

Q. You are a Republican in politics?—A. Yes, sir.

Q. On November 5, 1912?—A. Yes, sir.

Q. Have always been a Republican?—A. Yes, sir.

Q. When Mr. Knowles went away for lunch that afternoon I suppose there were some ballots that had been initialed on that table where they had been passed out from that day?—A. Yes, sir.

Q. When you got back there what did you say you did? What did you begin to do when you first went there, I mean?—A. I went around and asked Mr. Knowles—

Q. (Interrupting.) I didn't ask you about that, but what did you begin to do in the way of performing your duties?—A. I went on the south side of the booths to receive the ballots.

Q. Did you receive ballots in the afternoon up to the time the polls closed?—A. Except for a few minutes I was away.

Q. Mr. Knowles, then, I suppose, was on the other side of the booths passing out the ballots to the voters?—A. Yes, sir.

Q. And you took them and deposited them in the ballot box?—A. Yes, sir.

Q. That is what you did there, up to the time the polls closed, was to receive ballots and put them in the ballot box?—A. Yes, sir.

Q. What kind of a ballot box was that in which you put the votes for the different candidates; describe it?—A. It was a wooden box, probably 28 or 30 inches high and perhaps 12 or 14 inches square.

Q. Who opened it up when you began the count? A. I don't remember.

Q. Did you notice how full it was?—A. I don't think I noticed how full it was, but I knew beforehand how full it was.

Q. It had no rollers where the slot was?—A. No, sir.

Q. You got the ballots in there—all that were voted that day?—A. Yes, sir.

Q. The ballots, as you understand it, were all of the same kind that were used in the county of Eaton, as far as you know?—A. As far as I know.

Q. You understood they were the official ballots handed out?—A. Yes, sir.

Q. Printed by official authority and handed out to the different voting precincts in this county?—A. Yes, sir.

Q. For that election?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. I call your attention to Exhibit 25, page 12, opposite the names of Representatives in Congress and opposite the title you find the name of John M. C. Smith under the title "Candidates' names"; what is the color of the line on which his name is written?—A. Red.

Q. Now, above that is there a large blue line, a strong blue line across the page?—A. Yes, sir.

Q. Between that red line and blue line is there a faint blue line running from the candidates' names to the right of the column that is headed "Total straight votes"?—A. Yes, sir.

Q. Under the head of "Total straight votes," opposite the name of John M. C. Smith, what number do you find?—A. Sixty-five.

Q. He was credited with 65 total straight Republican votes on that record?—A. Yes, sir.

Q. Opposite his name, under the heading "Total split votes," how many do you find?—A. Fifty-nine.

Q. Now, you stated on your direct examination that when they kept the tally of the split votes they put the minus number on the under side of this faint blue line and they put the plus on top of the blue line. Now, taking that, just add together the total straight votes given John M. C. Smith, 65, and the total split votes—what do they amount to?

Mr. ADAMS. I object to counsel stating that the witness has not testified to as incompetent, irrelevant, and immaterial.

Q. What do those two numbers amount to?—A. One hundred and twenty-four.

Q. That is, the total straight and split Republican votes amount to 124?—A. Yes, sir.

Q. For John M. C. Smith?—A. Yes, sir.

Q. Now, take the vote for Representative in Congress at Large, opposite the name of Patrick H. Kelly, how many total straight Republican votes and split votes were given him?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

The WITNESS. One hundred and twenty-four.

Q. Take the office of justice of the supreme court for the term ending December 31. Franz C. Kuhn, what are the total straight and split votes given to him?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

The WITNESS. One hundred and twenty-four.

Q. Look through this book, from the beginning, and see whether that was the number of straight and split votes which were given to each man upon the Republican ticket for every office.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial..

Q. Sixty-five straights and 59 splits?—A. Yes, sir; I think so.

Q. Go on through the book and give each office. For governor, how many, or the electors first?—A. Each elector was given a total of 124.

Q. Sixty-five straights and 59 splits?—A. Yes, sir. Governor, 65 straights and 59 splits, total 124; lieutenant governor, 65 straights and 59 splits, total 124; Fred C. Martindale, 65 straights and 59 splits, total 124; State treasurer, 65 straights and 59 splits, total 124; auditor general, 65 straights and 59 splits, total 124; attorney general, 65 straights and 59 splits, total 124; commissioner of the land office, 65 straights and 59 splits, total 124; justice of the supreme court, 65 straights and 59 splits, total 124; State senator, 65 straights and 59 splits, total 124; representative in the State legislature, 65 straights and 59 splits, total 124; judge of probate, 65 straight's and 59 splits, total 124; sheriff, 65 straights and 59 splits, total 124. The same figures are shown for county clerk, county treasurer, register of deeds, prosecuting attorney, circuit-court commissioners and coroners.

Q. Now, take the Democratic ticket, all the officers were credited up in the first place with how many straights?—A. Forty-eight.

Q. How many splits?—A. Sixty-four.

Q. Look through and see whether that was done with all the offices.—A. Yes, sir.

Q. On the Democratic ticket?—A. Yes, sir.

Q. Was each ticket on that big ballot treated in the same way?—A. Yes, sir.

Q. Now, return to the office of Representative in Congress, and I will ask you whether it appears from this book that in the first instance each candidate for Representative in Congress was credited with the total straights and total splits?—A. Yes, sir.

Q. John M. C. Smith gets how many?—A. One hundred and twenty-four.

Q. How many for Claude S. Carney?—A. One hundred and twelve.

Q. They start in that way. Now, on this under line front of John M. C. Smith's name how many minuses appear there?

Mr. ADAMS. I object to that as incompetent and assuming something that the book does not show at all; there are no minuses there.

The WITNESS. Eight.

Q. Those are the tallies on the under side of the blue line?—A. Yes, sir.

Q. If there were that many minuses, how many would that leave at that point?—A. One hundred and sixteen.

Q. How many pluses appear on the upper side of that line?

Mr. ADAMS. I object to that as incompetent, something that the witness has not testified to and that the return that the witness is referring to does not show.

The WITNESS. Forty-five.

Q. Adding that to what would be referred to as minus, how many does it make?—A. One hundred and sixty-one.

Q. Is that the total number of votes received opposite his name?—A. Yes, sir.

Q. Claude S. Carney was given credit in the first place for 112?—A. Yes, sir.

Q. How many minuses were there?

Mr. ADAMS. There is no showing there are any minuses or anything on the return that the witness is reading from to show that there are any such, and it is incompetent, irrelevant, and immaterial and calling for the conclusion of the witness and speculative.

The WITNESS. Twenty.

Q. You take that from 112, and it leaves how many?—A. Ninety-two.

Q. How many pluses?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and the conclusion of the witness; there is nothing on the record to show there are any pluses.

Q. How many would it make?—A. Fifteen pluses would make a total of 107.

Q. Is that what he is credited with on the record?—A. Yes, sir.

Q. Is there any other combination that you can make out of those figures other than you have just given?—A. Not that I know of.

Q. Now, Witness, I hand you Exhibit 26, page 7, under the heading "Whole number of votes given for the office of Representative in Congress." I ask you to read.

Mr. ADAMS. That is already in.

Mr. MAYNARD. I understand that is already in.

Q. This book you have been reading from, what is it?—A. The tally sheet.

Q. Of what?—A. Of the general election held on Tuesday, the 5th day of November, 1912, second ward, city of Charlotte, county of Eaton, Mich.

Q. After that tally sheet was made up and after the ballots were read, did you then prepare this statement?—A. Yes, sir.

Q. In this exhibit 26, on page 7, what do you find under the names for Representative for Congress; under the candidates' names whose names do you first see?—A. John M. C. Smith's.

Q. Opposite his name, written out in words, what do you find?—A. One hundred and sixty-one.

Q. After that, in figures, what?—A. One hundred and sixty-one.

Q. Does that compare with the tallies and the figures in the tally-sheet book?

Mr. ADAMS. I object to that as incompetent.

Q. How do they compare?

Mr. ADAMS. I object to that as incompetent; the book shows for itself, and the contents are already in.

The WITNESS. The figures are correct in both books.

Q. How are the words?—A. The words are the same as the figures.

Q. Claude S. Carney, what do you find opposite his name?—A. One hundred and seven.

Q. The figures opposite?—A. One hundred and seven.

Q. Do they agree with the figures on the tally book?—A. They do.

Q. Now, Mr. Barber, state whether or not any votes were counted for John M. C. Smith that did not appear on the ballots at that election?—A. Not that I know of.

Q. Did any pluses that were cast there for Claude S. Carney fail to be accounted for?—A. Not to my knowledge.

Recross-examination by Mr. ADAMS:

Q. You don't know whether the clerks put down the votes as they were called off for the respective candidates correctly or not?—A. I have no way of knowing that.

Q. I understood you to say, so far as Representative in Congress was concerned, in the two books—the tally sheet, Exhibit 25, and the statement book, Exhibit 26—opposite the names of John M. C. Smith and Claude S. Carney, that they agreed. Did I understand you that way?—A. The numbers were the same. I said.

Q. Just the figures you mean, just the total figures?—A. Yes, sir.

Q. These figures opposite the name of John M. C. Smith in the two books—161—are the same in both books?—A. Yes, sir.

Q. One hundred and seven opposite the name of Claude S. Carney are the same in both books?—A. Yes, sir.

Q. There are no total straight votes and no total split votes for either of those two candidates shown in the statement book, Exhibit 26, is there?—A. No, sir.

Q. Nor is there any writing in the tally-sheet book, Exhibit 25, opposite the name of John M. C. Smith, as follows: "One hundred and sixty-one," written out in ink, is there?—A. No, sir; no writing in the tally book.

Q. There is no writing of the words "One hundred and seven" in the tally book, Exhibit 25, opposite the name of Claude S. Carney, is there?—A. No, sir.

Q. Now, then, opposite the name of John M. C. Smith there are a total of how many tallies, little strokes there, as shown by the book?

Mr. FRANKHAUSER. I object to that, as having been gone over.

Q. Count up the strokes and see, or the tallies that appear there opposite the name of John M. C. Smith. Tell me how many tallies appear opposite his name, please.

Mr. MAYNARD. Pluses and minuses?

Mr. ADAMS. I object to that.

The WITNESS. Fifty-three.

Q. Opposite the name of Claude S. Carney, what are the total of the tallies opposite his name?—A. The total number of pen strokes is 35.

Redirect examination by Mr. MAYNARD:

Q. There are no blanks opposite either of those names prepared for that purpose, for writing that in; no blanks opposite in the tally book?—A. I don't understand the question.

Q. No blanks for writing out the figures in full?—A. No, sir.

Q. Prepared for that purpose?—A. No, sir; none.

Q. Make a little computation for me. The total number of strokes opposite John M. C. Smith's name is how many?—A. Fifty-three.

Q. Opposite the name of Claude S. Carney are how many?—A. Thirty-five.

Q. How many splits for John M. C. Smith?—A. Sixty-five.

Q. How many straights for John M. C. Smith?—A. Fifty-nine.

Q. How many straights were given for Claude S. Carney?—A. Forty-eight.

Q. How many splits?—A. Sixty-four.

Q. Add them together and see how many that would make.—A. Three hundred and twenty-four.

Q. That would be more than the voters that voted there at that election?—A. Yes, sir.

Q. That would be evident that that was not the method on which they computed on the tally book?

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and calling for the conclusion of the witness.

The WITNESS. It is evidence to me; yes, sir.

Recross-examination by Mr. ADAMS:

Q. One hundred and sixty-one under the heading, "Total votes received," in this Exhibit 25, does not show the sum total of the straight votes and split votes opposite the name of John M. C. Smith, does it?—A. No, sir.

Q. It shows more than the total of the votes contained in the two columns under the headings "Total straight votes" and "Total split votes," opposite the name of John M. C. Smith, does it not?—A. Yes, sir.

Q. One hundred and seven, under the heading "Total votes received," does not show the sum total of the votes recorded in this exhibit in the columns "Total straight votes" and "Total split votes"?—A. No, sir.

Q. It shows some less, does it not?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. In your computation you did not carry out the proposition, but left out part—left out 2. What would that amount to for Representative Levant L. Rogers? How many ballots are there opposite his name, 3?—A. Yes, sir.

Q. How many ballots opposite his name?—A. Five.

Q. Set down now to Mr. Dingley?—A. Twenty-eight.

Q. How much here?—A. Forty-four.

Q. Computing by the method that Judge Adams is struggling for, it would show that the clerk had given how many votes for Congressmen?—A. Four hundred and sixteen.

Q. As recorded, how many did they get credit for being cast at that election?—A. For who?

Q. For Congressmen.—A. Three hundred.

Q. The whole number of votes cast at that election was how many?—A. Three hundred and nine or three hundred and ten.

Q. The way Judge Adams is seeking to have you compute that you would have 416 votes?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. I simply asked you to give what the book shows, didn't I, and you have given it?—A. It is not what the book shows to me; no, sir.

Q. It is what the book shows; you have got to assume something to have it show anything else, isn't that true?—A. I don't know whether it is true or not, if I assumed something I know.

Q. If you take the book as it is there, you have got to supply something to figure it out the way you figured it out for Judge Maynard?—A. I didn't have to supply anything—

Q. You have to assume something that the book does not show in order to do it, don't you?—A. No, sir; I assume that somebody would have showed me how to add those up—

Q. You have to assume that some of these ballots are minus and some plus?—
A. I know they are.

Q. The book doesn't show they are?—A. It does to me.

Q. Explain how it shows it—whether there is anything on that book that shows that some of these ballots are plus and some minus.—A. This light-blue line shows to me that some are plus and some minus.

Q. It does?—A. Yes, sir; it does to me.

Q. There is nothing there except the fact that there is a blue line to show the plus and minus, as you say; is that right?—A. There is nothing but that blue line.

Q. If you hadn't put down those two rows of tallies there—the strokes, I mean—in the way you put them down there, the blue line and the red line and all the lines of that exhibit were printed on there just the same and would have been there just the same?—A. They would be there just the same; yes, sir.

Q. So the lines have nothing to do on the face of that return there on the tally book with the plus and minus?—A. The lines have nothing to show it until the entries are made.

Q. You simply say because there are two rows of tallies opposite the name of John M. C. Smith and opposite the name of Claude S. Carney that one line is plus and the other line is minus?—A. Yes, sir; that is what I say.

Q. Aside from that there is not a single thing on that book to show what ballots were plus or what were minus, if any, opposite those two names?—
A. Nothing on there to show it.

Redirect examination by Mr. MAYNARD:

Q. I do not know, but I asked you whether you ever had any experience in tallying for elections with this system?—A. I never have.

Q. Have you seen them where they were to work at it?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. Which ones are plus opposite the name of John M. C. Smith and which ones do you call minus?—A. I call the ones in the upper row plus and the ones in the lower row minus.

Q. I show you the tally-sheet book from the township of Eaton Rapids of the election held on the 5th day of November, 1912, opposite the names, "Representatives in Congress," under the blue line opposite those names you find tallies there opposite the name of John M. C. Smith, under that blue line, don't you?

Mr. MAYNARD. I object to that as incompetent and immaterial; that is not the same system and has nothing to do with this book.

Q. Tell me whether that is not true, as far as the book I am now showing you and calling your attention to, the tally-sheet book of the township of Eaton Rapids of the November 5, 1912, election, opposite Representatives in Congress, and opposite the name of John M. C. Smith, that all the tallies—

Mr. MAYNARD. There are not two rows of tallies, and that is not the same system as this adopted in the second ward.

Q. Are there below the little blue line, opposite the name of John M. C. Smith, some strokes?—A. Yes, sir.

Q. Now, then, there are how many strokes there opposite the name of John M. C. Smith, Representative for Congress?—A. Seventy-seven.

Q. They are carried out 77 under the head of "Total split votes"?—
A. Yes, sir.

Q. Under the name of Claude S. Carney, under the blue line opposite his name on this Eaton Rapids Township tally-sheet book for the election held November 5, 1912, how many strokes are there?—A. Twenty-three.

Q. That is carried out in figures under the head "Total split votes"?—
A. Yes, sir.

Q. This book I am now calling your attention to is ruled just exactly like Exhibit 25, isn't it—the tally-sheet book of the second ward of the city of Charlotte for the general election held November 5, 1912?—A. Yes, sir.

Q. I will show you Exhibit 66, the tally-sheet book of the general election held November 5, 1912, in the second ward of Grand Ledge, Eaton County, Mich.

Mr. FRANKHAUSER. I will object to that, because it is apparent that different boards use different methods in tallying in different parts of the county, and we object to that as incompetent, irrelevant, and immaterial and has having no bearing upon the special manner of tallying and no connection whatever with this case.

Q. I call your attention to Exhibit 66, pages 12 and 13, opposite the printed words there "Representative in Congress," and John M. C. Smith's name is opposite that office for Representative in Congress, isn't it?—A. Yes, sir.

Q. And Claude S. Carney's?—A. Yes, sir.

Q. This book is ruled just exactly like Exhibit 25, isn't it?—A. Yes, sir.

Q. That is, a red and blue line—a heavy red and blue line are the same?—A. Yes, sir.

Q. It is divided off into little squares to put these tallies in in both of these exhibits I have just referred to?—A. Yes, sir.

Q. Over the little blue line opposite the name of John M. C. Smith you find some of these strokes or tallies?—A. Yes, sir.

Q. Under the little blue line opposite the name of John M. C. Smith you find some strokes or tallies?—A. Yes, sir.

Q. So both above and below the blue line, opposite the name of John M. C. Smith, in Exhibit 66 they are just the same as in Exhibit 25, and opposite the name of John M. C. Smith, are they not?—A. They are both above the light line.

Q. How many strokes do you find in Exhibit 66 opposite the name of John M. C. Smith, below the light blue line?—A. Twenty-four.

Q. A total of 24. You find 24 carried out as the total split votes, don't you?—A. Yes, sir.

Q. Fourteen of those are above the little blue line opposite the name of John M. C. Smith?—A. Yes, sir.

Q. And 10 below the little blue line?—A. Yes, sir.

Q. Opposite the name of Claude S. Carney you find 12 strokes above the little blue line?—A. Yes, sir.

Q. And 10 of them below that little blue line?—A. Yes, sir.

Q. That makes a total of 22, does it not, opposite the name of Claude S. Carney?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Take this Exhibit 65, that is not kept by the plus and minus system at all?—A. No, sir.

Q. Take this exhibit from the township of Eaton Rapids, shown you by counsel for the contestant; tally book of the general election held on Tuesday, November 5, 1912, in the township hall in the township of Eaton Rapids, county of Eaton, and referring to the page which he mentioned—page 12—opposite the name of John M. C. Smith you find long lines of tallies; that is not the same system used in this ward?—A. No, sir.

Q. No plus and minus system about it?—A. No, sir.

Q. By this system you would have to read all the tallies clear through?—A. Yes, sir.

Q. And here you only have to read the names that are marked?—A. Yes, sir.

CLAUDE S. KNOWLES, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Knowles, where do you reside?—A. In the fourth ward, city of Charlotte, Eaton County, Michigan.

Q. What is your age?—A. I am 43.

Q. Are you a married man?—A. Yes, sir.

Q. When did you move into the ward where you now reside?—A. The 28th of January.

Q. What is your occupation?—A. I am an engineer.

Q. Are you engineer for any particular manufacturing company here in the city?—A. For the Charlotte Manufacturing Co.

Q. How long have you been engineer for the Charlotte Manufacturing Co.?—A. Seventeen or eighteen years.

Q. What ward did you reside in previous to your moving to the fourth ward?—A. In the second ward.

Q. Did you hold any official position in the second ward on the 5th day of November, 1912?—A. Yes, sir.

Q. If so, what?—A. I was alderman in the second ward.

Q. How long had you been alderman?—A. At that time?

Q. Yes, sir.—A. Five years.

Q. Since that election you say you have removed from the ward?—A. Yes, sir.

Q. Have you resigned?—A. Yes, sir.

Q. Mr. Knowles, were you present at the general election held on the 5th day of November, A. D. 1912, in the second ward of the city of Charlotte, Eaton County, Mich.?—A. Yes, sir; I was.

Q. What official position did you fill there that day on the election board?—A. I acted as inspector.

Q. Who else acted as inspector at that election on that particular day?—A. Mr. Hamilton, until he was taken sick, then his place was supplied by Roy Barber.

Q. C. R. Barber who just left the witness stand?—A. Yes, sir.

Q. What time of day did the polls open that morning?—A. Seven o'clock.

Q. Whereabouts was the election held?—A. In the corridor of the courthouse, below here.

Q. In the basement?—A. In the basement.

Q. Do you remember about how wide the election booths were?

Mr. ADAMS. We did not controvert that fact and it has been shown here very plainly.

Q. Which way did the booths run?—A. Lengthwise.

Q. Which way?—A. East and west.

Q. At the east end what was there there for a fence?—A. There was a gate on each side and a fence.

Q. The gate was at which corner of the election booth, the northeast corner?—

A. The northeast corner, and the voters came in at the northeast corner from the booths and went out on the southeast corner.

Q. Who was the gatekeeper next to you?—A. Mr. Rogers.

Q. Which corner was he located at or near?—A. The northeast corner.

Q. What particular duties did he perform?—A. He initialed the ballots and passed them out to the voters.

Q. About what time of day did Mr. Hamilton leave?—A. Why I should think about 11 o'clock, as I remember it.

Q. Did you go to dinner—to refresh your recollection—before he went to dinner or went home?—A. I think so.

Q. Who was left in charge of the booths while you went to lunch at noon?—A. I think Mr. Hamilton was.

Q. When you got back what did Mr. Hamilton do?—A. He left for dinner.

Q. Who was left in charge then when he went away?—A. Mr. Barber came shortly after.

Q. Before he came? When he left there, were you in charge of the booths?—A. Yes, sir.

Q. What did you do while he was—did you expect Mr. Barber there, or somebody in his place?—A. Yes, sir; I expected him.

Q. In the interim before Barber came what did you do?—A. I passed out the ballots and received them.

Q. How did you go to get to the ballot box when you were passing them out and receiving them?—A. I went down one side and crossed to the ballot box on the south side.

Q. That is, you went around the booths to the west end?—A. Yes, sir.

Q. When you received the ballots, what did you do, did you make any announcement; if so, what?—A. I called the number of the ballot to the clerks and put them in the ballot box.

Q. What was done with the perforated corner of the ballot?—A. I tore it off and threw it on the floor.

Q. Did you see John C. Nichols there?—A. Yes, sir.

Q. Did he receive any ballots?—A. Yes, sir.

Q. How did he come to do that?—A. I asked him to.

Q. Just state what he did?—A. Why, it was during the noon hour and there were several came in there at once and I was busy and Mr. Nichols stood there, and I asked him to receive ballots for a few minutes.

Q. What did he say?

Mr. ADAMS. I object to what he said; it is incompetent and immaterial.

A. I don't remember what he said; he came inside and received a few.

Q. About how many did he receive?—A. I think in the neighborhood of five or six or seven.

Q. Then what took place?—A. Well, Mr. Barber came and relieved him. No, I think not; I think, before that, that I took care of them myself; I think I received some before Mr. Barber came, after Mr. Nichols took a few.

Q. When Mr. Barber came what position did he take?—A. He received ballots and placed them in the ballot box.

Q. Did you go away again that afternoon before the polls closed?—A. No, sir.

Q. Did you go out to lunch?—A. Yes, sir.

Q. When?—A. About 4.30.

Q. Who took care of matters while you were gone?—A. Mr. Barber.

Q. Then did Mr. Barber go out to lunch?—A. I think he did for a few minutes.

Q. Who took charge of it while he was gone?—A. I did.

Q. Were there any ballots came in to be deposited while he was gone?—A. I don't remember; I think there were; there was but one or two.

Q. What time did the polls close?—A. At 5 o'clock.

Q. After the polls closed did you proceed with the count?—A. Yes, sir.

Q. Was there any interruption after you commenced the count before you got it completed?—A. I don't think so; I don't remember of any.

Q. How did you arrange matters there for the count?—A. I don't understand you.

Q. What did you do with the booths?—A. The booths were pushed to one side and we pushed a couple of tables together, and the ballots were counted on them.

Q. Those booths—were they light, portable affairs?—A. Yes, sir.

Q. They could be pushed around anywhere you wanted to?—A. Yes, sir.

Q. In counting, who read the ballots when you began the count?—A. I did.

Q. Did you read the whole of them?—A. I don't remember as to that; I think I did.

Q. No one did any of the reading but yourself?—A. I don't think they did.

Q. What have you to say as to whether you read them honestly and correctly as you received them from the ballot boxes?—A. I read them as I found them, or tried to.

Q. Who were your clerks?—A. Roy Preston and Herman Gulde.

Q. What did they do when you read off the ballots?—A. They entered them.

Q. Did they make any announcement?—A. Yes, sir; they checked each one as we called them.

Q. When you got through counting, what was done with the ballots?—A. The ballots were rolled up separately, the straight tickets in a bundle and marked, and the splits were all kept separate and all put in the ballot box.

Q. Now, were any of those ballots put anywhere else than in the ballot box that night when you got through; was there anybody allowed to take, or do you know whether anybody did remove or take away any bundles of those ballots that you had there?—A. Not that I know of; I don't think they did.

Q. Would you know if they carried away any ballots?—A. Yes, sir; I think so.

Cross-examination by Mr. ADAMS:

Q. Did you have any instruction ballots there that day?—A. Yes, sir.

Q. What was done with them when you got through?—A. I don't remember that any were there.

Q. Your recollection is that none were there?—A. I don't think so.

Q. That is your recollection; that you had none?—A. Yes, sir.

Q. The straight ballots that had been voted were put in one bundle by themselves?—A. Yes, sir.

Q. The splits that had been voted there you put in another bundle by themselves?—A. Yes, sir.

Q. And they were all put in the ballot box?—A. Yes, sir.

Q. What else, if anything, was put in the ballot box?—A. The tally sheet and poll book, I think; I have forgotten what they were; the tally sheet and some other things; the poll book.

Q. The statement book?—A. Perhaps so, I am not sure; I don't remember about that.

Q. You don't just remember what was put in there, if anything, besides the tally-sheet book? Are you sure?—A. No, sir; I don't remember.

Q. Where did you get instructions from as to what you were to put, if anything, into the ballot box?—A. On the envelope that the books came in I think the instructions were.

Q. Is that where you got your instructions from? Did you get any from any other source as to what you were to put in the ballot box?—A. I think so; I don't remember now.

- Q. You read off all the ballots; that is, all the votes as the voters had voted them from the different ballots?—A. Yes, sir.
- Q. Did anybody else read but you?—A. I think not.
- Q. From the time you began counting until you got through?—A. I read all of them, I think.
- Q. What was done with the ballot box after you put those things in that you say you did?—A. It was sealed and placed in the vault below.
- Q. How was it sealed?—A. With sealing wax and a thick piece of canvas stretched over it and sealed with sealing wax.
- Q. Stretched over what?—A. Over the top of the cover.
- Q. Over the entire cover?—A. Yes, sir.
- Q. And some sealing wax put on that strip of canvas?—A. Yes, sir.
- Q. Was the strip sealed down on the box?—A. I think so.
- Q. Sure about that?—A. Pretty sure.
- Q. What was done with the ballot box then?—A. It was put in the vault.
- Q. Did you see it put in the vault?—A. I helped put it in there.
- Q. Then you saw it?—A. Yes, sir.
- Q. You helped put the ballot box in which the votes were you counted there that were deposited? The ballots for the various candidates for the several offices in the vault that night, did you, of November 5, 1912?—A. I am quite sure we put it in the vault, both boxes.
- Q. Who helped you put it in the vault or who did you help put it in the vault, either one?—A. I don't remember; one of the clerks. I can't remember which one.
- Q. What vault did you put them in?—A. The vault; I don't know what kind of a vault. It belongs to the county, I guess, near where the booths were.
- Q. On the floor this election was held in the basement of the courthouse?—A. Yes, sir.
- Q. How did you get into that vault?—A. It was open.
- Q. When you put the ballot box in there state whether you locked the door of the vault?—A. No, sir.
- Q. Just put the ballot box in and left the door unlocked?—A. Yes, sir.
- Q. And went away and left the ballot box in that shape in the vault without the door being locked?—A. Yes, sir.
- Q. What did you do—did you have any election returns that you did not put in the ballot box before you locked and sealed it after you got through with your work?—A. I don't understand your question.
- Q. Well, did you make out any other returns or any other records there of what occurred at that election that day than those that you put in the ballot box?—A. No, sir; there was a poll book and a tally sheet that went to the county clerk.
- Q. What was done with them?—A. That was taken to the clerk's office.
- Q. To the clerk's office?—A. The county clerk's.
- Q. When was it taken there?—A. That same night.
- Q. Who took it there; did you take it there?—A. No, sir.
- Q. Did you go with anybody who did take it?—A. No, sir.
- Q. Where did you see it last?—A. On the table that we counted the votes upon.
- Q. You were inspector and went away from where you had been counting the ballots and left lying on the table an envelope in charge of somebody, and the returns in that envelope were addressed to the county clerk?—A. I don't think I went away and left it there; I think that Mr. Dann had it and took it to the county clerk's office.
- Q. Did you see Mr. Dann have it?—A. I think so.
- Q. Are you sure?—A. No, sir; I am not.
- Q. You saw Mr. Dann have it, or else it was on the table when you left the place?—A. As I remember it, Mr. Dann said he would take it and take it to the county clerk's office and went up on that floor.
- Q. Mr. Dann was the probate judge at that time?—A. Yes, sir.
- Q. Was the envelope addressed to the probate judge that you gentlemen put the returns in?—A. I don't remember about that.
- Q. You didn't furnish any returns to the probate judge of that election, of the proceedings there addressed to the judge of probate, or the board of county canvassers in care of the probate judge or the register of probate, did you?—A. I don't remember that.
- Q. You don't remember of anything of that kind having been done?—A. No, sir.

Q. The only returns that were not in the ballot box were those that were addressed to the county clerk?—A. That is as I remember it.

Q. I understood you to say that John C. Nichols received some ballots that day, did he?—A. Yes, sir.

Q. John C. Nichols?—A. Yes, sir.

Q. He was the man who was running on that ticket and was being voted for for the office of circuit court commissioner in this county of Eaton?—A. Yes, sir.

Q. The same fellow?—A. Yes, sir.

Q. He acted as challenger there, too, didn't he, at that voting place that day for the Republican Party?—A. I don't know whether he did or not.

Q. He did not present to you any credentials from any of the officers of the Republican Party here in the city of Charlotte authorizing him to act as challenger there at that polling place that day, did he?—A. No, sir.

Q. You didn't see any such credentials?—A. No, sir.

Q. Well, you called Mr. John C. Nichols in, and he received some ballots? He acted in that capacity when you called him in?—A. Yes, sir.

Q. Receiving the ballots?—A. Yes, sir.

Q. When you received those ballots he was on the opposite side of the booths from where you were?—A. Yes, sir.

Q. So there was no inspector near John C. Nichols where they could see what he was doing when depositing those ballots in the ballot box, was there?—A. No more than the clerks.

Q. I said inspectors.—A. No, sir.

Q. Now, you think John C. Nichols put in how many ballots?—A. I think in the neighborhood of six.

Q. Did you keep any count of them at that time?—A. No, sir.

Q. How long did he act?—A. Perhaps not to exceed 10 minutes, I don't think.

Q. Not to exceed 10 minutes?—A. I don't think so.

Q. Then, what did John C. Nichols do?—A. Why, I don't remember; he may have stood around.

Q. Not what he might have done, but what you remember?—A. I don't remember of seeing him afterwards.

Q. This was during the noon hour, was it, that John C. Nichols was there?—A. Yes, sir.

Q. He was inspector, performing the duties in putting those ballots in the box that an inspector would?—A. Yes, sir.

Q. You didn't swear him in, did you, to act in that capacity?—A. No, sir.

Q. You administered no oath to him?—A. No, sir.

Q. No oath was administered to him that day to act as inspector of that election in that ward?—A. No, sir.

Q. He was not selected by any of the voters who were there at the time he began to act—that is John C. Nichols I am talking about?—A. He was not nominated; no motion was made by any voters.

Q. There was no motion made; none of the voters asked the officers of the election there that John C. Nichols act as inspector; no such motion was made there?—A. No, sir.

Q. So he simply acted by and through a request that you made to him? He came in and took those ballots and put them in the box?—A. Yes, sir.

Q. That was all the authority he had to act in that capacity?—A. That is all; yes, sir.

Q. You are a Republican in politics, are you not?—A. Yes, sir.

Q. And you were on November 5, 1912?—A. Yes, sir.

Q. And have been for a number of years?—A. Yes, sir.

Q. All your life?—A. Yes, sir.

Q. And are at this time?—A. Yes, sir.

Q. R. S. Preston, one of the clerks, was he there at that election?—A. Yes, sir.

Q. What was his business, or had been his business, for some little time prior to the 5th of November, 1912?—A. He was cashier in a bank.

Q. What bank?—A. The First National Bank.

Q. Is that the bank that John M. C. Smith is connected with?—A. Yes, sir.

Q. He was connected with it at that time?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Do you know of anyone helping anybody mark their ballots at that election in the booths?—A. I don't think so; I don't remember.

Q. Did anybody else go into the booths with any voters that you know of?—A. I don't remember of anyone.

(Whereupon the hearing was adjourned until 1 o'clock p. m., March 25, 1913.)

MARCH 25, 1913—1 O'CLOCK P. M.

FRANK A. FORD, recalled for further cross-examination, and examined by Mr. Frankhauser, testified as follows:

Q. I show you Exhibits 7 to 12, inclusive, being envelopes containing the returns from certain townships in this county, and have you examine the figures and returns of the contents of those envelopes relating to the office of Congressman for the third district of Michigan.—A. I have; yes, sir.

Q. The statements books, I mean.—A. Yes, sir.

Q. Do you find any erasures or interlineations or any changes in those figures relating to Congressman in this district?—A. I do not.

Q. I show you a book, what is that?—A. That is the docket of justices of the peace and notaries public, liber B, county of Eaton.

Q. Is that book one of the records of your office?—A. Yes, sir.

Q. And one you kept?—A. Yes, sir.

Q. Does the law require it, or don't you know?—A. I don't know.

Q. Does that contain a statement of the notaries from time to time in this county?—A. It does.

Q. Will you turn to the name of Loyal W. Davis and see whether he was a notary public on November 5, 1912, according to that record? Read the record you find there on the page you are reading from.—A. (Reading:) "On page 290. notaries commission, dated May 25, 1910, Davis, Loyal W., township and city of Mulligan, post-office address, Mulligan. Date of qualification, May 25. 1910. Date of commission, May 23, 1910. Date of expiration, May 23, 1914."

Q. I will ask you now where Mulligan is situated?—A. Mulligan is a village in the township of Roxand.

Mr. FRANKHAUSER. We offer in evidence a compilation of the election laws of the State of Michigan, marked "Exhibit 67." It is stipulated between counsel for the contestant and contestee that Exhibit 67, entitled "Revision of 1911, State of Michigan, laws relating to elections compiled under the supervision of Frederick C. Martindale, secretary of state, by authority, Lansing, Mich., Wynkoop, Hallenbeck Crawford Co., State printers, 1911," contains all the election laws which were in force on the 5th day of November, 1912, in the State of Michigan, and that the same may be used on the hearing in this matter for the purpose of showing what the various laws relative to elections were on that date, namely, the 5th of November, 1912, and as applicable to the questions involved in this proceeding.

It is hereby stipulated and agreed between the attorneys of the respective parties that on the 5th day of November, 1912, that the city of Eaton Rapids, county of Eaton, was organized and doing business under the general statute of the State of Michigan relating to the incorporation of cities of the fourth class, and that the election laws governing elections in fourth-class cities and villages in the State of Michigan are contained in Exhibit 67, commencing on page 154 thereof.

Redirect examination by Mr. ADAMS:

Q. I understood you to say that in Exhibit 7 to and including Exhibit 12 there were no erasures or anything crossed out relating to Congressmen?—A. Yes, sir.

Q. In the statement book contained in Exhibit 9, under the heading "Representative in Congress," under the subdivision thereunder, "Votes received to be written out in words at length," is not written out in words at all opposite the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley?—A. It is not.

Q. In the tally-sheet book marked "Exhibit 35," which contains Bellevue, there are no tallies opposite the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley, candidates for Representative in Congress, except one tally opposite the name of Claude S. Carney?—A. That is correct.

Q. The figures carried out under the headings, "Total straight votes," "Total split votes," and "Total votes received," opposite the name of each of the candidates for Representative in Congress are in lead pencil?—A. Yes, sir.

Recross-examination by Mr. MAYNARD:

Q. Witness, in the statement book of general election held on Tuesday, the 5th day of November, 1912, in the village council rooms in the township of Bellevue, county of Eaton, State of Michigan, which has just been shown you, is the name of John M. C. Smith written in ink?—A. It is.

Q. What do you find beneath that?—A. Claude S. Carney.

Q. What next?—A. Levant L. Rogers.

Q. Next?—A. Edward N. Dingley.

Q. Are those written in lead pencil or ink?—A. All in ink.

Q. Is it good handwriting, plain handwriting?—A. Very plain; yes, sir.

Q. As to general form, is it written in good form or not?—A. It is.

Q. Opposite their names what numbers are written?—A. Opposite the name of John M. C. Smith, 246; opposite the name of Claude S. Carney, 155; opposite the name of Levant L. Rogers, 2; opposite the name of Edward N. Dingley, 45.

Q. What is the fact as to their being written, whether with lead pencil?—A. They are written in ink.

Q. All of them written in good form?—A. Yes, sir.

Q. In plain figures?—A. They are legible.

Q. I will ask you if there are any signs of alterations, interlineations, or erasures in any part of that record?—A. There is not.

Q. Now compare the others which you say are written in lead pencil upon this tally-sheet book, this Exhibit 35, on pages 12 and 13, how are the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley written, in lead pencil or otherwise?—A. They are written in ink.

Q. Look this book through—the tally book; do you find after any officer any tallies except the writing out of the figures at the right hand? There are no tallies on those pages, are there? Are there any tallies on pages 3 and 4?—A. No, sir.

Q. On pages 2 and 3?—A. No, sir.

Q. Pages 4 and 5?—A. None.

Q. Pages 6 and 7?—A. None.

Q. Or 8 and 9?—A. None.

Q. Look the book through and see whether there are or not there any tallies.—A. On pages 10 and 11 there are four tallies.

Q. The tallies of the votes are not made on here as they are in the other book—only at the head of each office run for; just a check?—A. Yes, sir.

Q. In lieu of tallies, I mean, are those figures at the back end?—A. No, sir.

Q. So if they kept any tallies, they were kept in a separate place, evidently?—A. Yes, sir.

Q. What is in the right-hand side?—A. The total straight votes and the total split votes and the total votes received.

Q. Those figures making the totals of those several items, what are they made in, ink or lead pencil?—A. Lead pencil.

Q. Look opposite the names of John M. C. Smith, Claude S. Carney, and see whether the lead pencil numbers agree with this writing which is in ink.—A. I find they all agree.

Redirect examination by Mr. ADAMS:

Q. Of course you don't know when any of these figures in this book that counsel has just called your attention to, opposite the name of John M. C. Smith and the other candidates, were put in this book?—A. I do not; they were there at the time I received them, the 1st of January, when I went into office.

Q. In this statement book that you have just been referring to, that Judge Maynard asked you about relating to the election held November 5, 1912, in the township of Bellevue, every officer mentioned in that book for the various offices designated in the book there is written opposite the name of each candidate, aside from those for Representative in Congress, the number of votes received—written out next to the name—in words, in ink, in addition to the figures shown on the book, showing what the vote of each candidate was; isn't that true?—A. It is.

Q. So that under the office "Representative in Congress," opposite the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley, as the names appear under the title "Representative in Congress," there are no—it is not written out in words at length how many votes each of those parties received?—A. No, sir.

Q. That is the only exception in that record, throughout that entire book, as to the various officers voted for at that election?—A. Yes, sir.

Q. Now, both of the envelopes from the township of Bellevue—the one addressed to the county clerk, Charlotte, Eaton County Mich., with the election returns of that election, and also the envelope addressed to the board of county

canvassers, care the judge of probate or register of probate—have written on the back of them, right under the flaps, something showing what the condition of those envelopes were when received?—A. Yes, sir.

Q. Now, then, referring to Exhibit 9, the one addressed to the board of county canvassers, containing the Bellevue Township returns, what does that say there, written in ink under the flap on the back of the envelope?—A. (reading). "Received unsealed by Carrier 4, Hall."

Q. Referring to the envelope containing the election returns from Bellevue Township, addressed to the county clerk, Charlotte, Eaton County, Mich., what do you find under the flap there, written in ink on the back of this envelope?—A. (reading). "Received bad, unsealed, Hall, carrier."

ROY S. PRESTON, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Preston, where do you reside?—A. In the second ward in the city of Charlotte.

Q. Eaton County, Mich.?—A. Yes, sir.

Q. What is your age?—A. I am 33.

Q. How long have you lived in the city of Charlotte?—A. About 25 years.

Q. How long have you lived in the second ward?—A. About 12 years.

Q. What is your occupation?—A. I am teller in the First National Bank.

Q. How long have you been employed in the bank?—A. About four years and a half.

Q. What was your occupation before that?—A. I was agent for the Michigan Central Railroad Co., at Charlotte.

Q. How long did you hold that position?—A. With the Michigan Central, about six years.

Q. Were you with any other railroad?—A. I worked for the Pennsylvania Co. and the Grand Trunk.

Q. When you worked for the Michigan Central Railroad Co., where were you employed?—A. South Bend, Ind.

Q. Where were you employed by that company in this city?—A. That is where I was with the Michigan Central, in Charlotte.

Q. Where were you with the Grand Trunk Co.?—A. I was with them one year at Charlotte and three years in South Bend.

Q. Your last railroad employment was with the Michigan Central in Charlotte?—A. Yes, sir.

Q. You were with them about how long?—A. About six years.

Q. Since that did you go to work for the bank?—A. Yes, sir.

Q. In what capacity?—A. As bookkeeper.

Q. You are now teller?—A. Yes, sir.

Q. Were you present at the general election held in the second ward of the city of Charlotte, Eaton County, Mich., on November 5, A. D. 1912?—A. Yes, sir; I was.

Q. Did you act in any official capacity at that election in that place?—A. I was one of the clerks of the second ward.

Q. Were you there when the polls opened that morning?—A. Yes, sir.

Q. Did you ever work in the same capacity as this before?—A. Yes, sir.

Q. More than once?—A. Some four or five times.

Q. How long ago was the first time?

Mr. ADAMS. Objected to as incompetent and immaterial.

A. If I remember rightly, I acted as clerk once before I went to work in the bank.

Q. And several times since?—A. Three or four times since.

Q. I show you this Exhibit 25, the tally sheet from that precinct of that election, and ask you if you know who kept that tally sheet? Whose handwriting it is?—A. It looks to me like Herman Gulde's, that sheet.

Q. Do you know in whose handwriting the statement book, Exhibit 26, is?—A. That looks like Mr. Gulde's also; it is not mine.

Q. In whose handwriting is the poll book?—A. That is Mr. Gulde's; he was the other clerk of the election.

Q. That same election?—A. That same election.

Q. Did you keep one set of books and he one?—A. Yes, sir.

Q. Who kept the tally book; that is the one you kept; and the other two books you think were kept by Mr. Gulde?—A. They must have been; it is not my writing, and he was the other clerk.

Q. Was this kept after the same system you kept yours?—A. Yes, sir.

Q. Take the tally sheet and look at the tally-sheet book, and turn to the page where the tallying was done for the office of Congressman; what page is that?—

A. The pages open up at pages 12 and 13.

Q. Now, Witness, now, after being printed there in front—printing the offices for which the votes were cast—under the column "Candidates for office," what names do you find written?—A. John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward M. Dingley.

Q. Now, on the right-hand side of the book, do you find two columns, and what are they?—A. "Total straight votes" and "Total split votes."

Q. What is the next?—A. "Total votes received."

Q. Now, under that system of counting, how did you set down that record?—

A. I gave each candidate the full number of straight votes and also the full number of splits on his ticket.

Q. Just as though he received the full amount?—A. Just as if he had received the total amount. As they were calling off the split votes afterwards he was given the benefit of all the plus and minuses that occurred.

Q. Plus—you say he was given the benefit of the plus—what do you mean by that?—A. He would get a minus on all those we had originally given him, the total amount of all the splits; if his vote had been split a minus was given to the other candidate.

Q. If somebody voted against him?—A. Yes, sir; he was given a check as minus if the candidate voted for was given a plus.

Q. On which side of the line were the minuses put?—A. On the bottom.

Q. Where were the plusses put?—A. On top.

Q. By looking at that name, John M. C. Smith, and the tallies immediately following, can you tell how many votes were struck off from John M. C. Smith's record of the votes cast against him on his own ticket?—A. Yes, sir.

Q. How many?—A. He received eight minus votes.

Q. The minus votes would be the ones that came from his own party ticket?—A. Yes, sir.

Q. He is credited in the first place with how many straights?—A. The tally sheet shows 65.

Q. How many total splits?—A. Fifty-nine.

Q. Now, if he lost any by any of his party voting against him that would be what kind of a vote?—A. That would be called a minus.

Q. Was that deducted from it?—A. Yes, sir.

Q. If he had 65 and 59 to start out with you would take from that 8 votes?—A. Yes, sir.

Q. And to that result would be added what he got from the other parties on the plus votes?—A. Yes, sir.

Q. How many did he receive from the other parties?—A. He received 45.

Q. That gave him a total of how many?—A. One hundred and sixty-one.

Q. Was that the way that record was made up—that is the way this tally sheet shows?

Mr. ADAMS. Do you mean that?

A. I don't just get your meaning.

Q. Mr. Preston, is that the way that tally sheet was kept?—A. Yes, sir.

Q. The minus marks were put under the line?—A. Yes, sir.

Q. Where were the plus marks put?—A. On top.

Q. Is that the way it was kept with every candidate in that ward?—A. Yes, sir.

Q. Where did you sit in the voting booth?—A. It would be at the west end of the booth. In the northwest corner of the place that was stretched off for the voting place.

Q. Was here any room around the west end of the booths?—A. We could walk between our tables and the booths.

Q. That is the west end of it?—A. Yes, sir.

Q. Which were you, the south one of the clerks or north one?—A. The south

Q. You sat nearest to the box?—A. I was nearest to the box.

Q. Do you remember whether or not Mr. Hamilton was one of the inspectors of election?—A. Yes, sir.

Q. Do you know about when he left?—A. I couldn't tell you the hour exactly, but somewhere near noon.

Q. Did you see him back there that day?—A. I did not.

Q. Did you see anybody come in his place?—A. Roy Barber was sworn in to act in his place after he went home sick.

Q. Did you see Mr. Barber when he first arrived?—A. Yes, sir.

Q. What did he do in the first place?—A. He came there and was sworn in and took the position of receiving ballots and putting them in the box.

Q. When the ballots were handed to the voters on the north side of the booth, who announced the name after they had prepared their ballots?—A. They came out on the south side of the booth.

Q. Was there any announcement made when they came out?—A. Their name was called and the number on the ballot.

Q. What did you do?—A. We checked that off from the list of voters there; the poll book it is called.

Q. On this Exhibit 15, on this list here?—A. Yes, sir.

Q. When you got through did the ballots that remained correspond with that number?—A. Yes, sir; exactly when we counted up.

Q. Did you compare them with the list?—A. We compared the total amount it shows there, 310, with the amount of ballots we had on hand.

Q. They voted the 310 votes?—A. It seems to me there was 1 vote. if I remember right, that was canceled or something; it was no good for some reason.

Q. Not considered a legal vote, is that what you mean?—A. I can't remember exactly whether it was—it seems to me it was put in no vote at all; no marks on it; a ballot that counted nothing for anybody.

Q. What you mean is that there were 310 votes cast, 309 counted, and the number destroyed 1; is that what you mean by that?—A. This ballot I refer to I can't just place it—the exact cause of that; but the ballot counted nothing for anyone.

Q. Now, Witness, were you there when the polls closed?—A. Yes, sir.

Q. What did you first do?—A. It was announced that the polls were now closed and we moved the booths back slightly so we could have more room and got our tables together and the ballot box emptied and proceeded with the count.

Q. What did you do to count them?—A. We took them all out and separated them into piles; that is, with reference to each party's straight votes and each party's split votes.

Q. Were they counted then?—A. Yes, sir.

Q. When you counted the straights what was done; were they announced?—A. The total number of straight votes were immediately entered in our tally-sheet book.

Q. Were those entered by yourself just as they were given to you?—A. Yes, sir.

Q. Then, after the straight votes were counted and credited up to each candidate, what was done with the splits?—A. The total number of split votes were counted and each party given credit for the total number of splits, the same as the straights at first.

Q. Then what did you do?—A. We took each party's vote separately and went through the plus and minus system, as has been stated.

Q. Proceeding under that system, how much, or what part, of the reading were you able to avoid?—A. What part of the reading of the ballots?

Q. Yes, sir.—A. We simply just called the candidates that had—where the splits had occurred.

Q. No other part of the ballot was read?—A. No, sir.

Q. Each one had credit for the entire vote anyway?—A. Yes, sir.

Q. Now, then, when you were making this tally of the splits of the minus vote, did you make a correct tally, just as they were read off to you?—A. Yes, sir; Mr. Gulde and I agreed on every check.

Q. Did you check through with each other?—A. Yes, sir.

Q. All the way through?—A. When we were through, each checked back to the other to see that we had the same number of plus and minus for each candidate.

Q. Was there any difference?—A. We didn't find any; they seemed to be the same.

Q. Did you record them as they were read off to you?—A. Yes, sir.

Q. During the day there, at any time during the noon hour, at any time, did you see John C. Nichols in the inside of the voting place?—A. I think he was there a few minutes.

Q. What did you see him doing, if anything?—A. If I remember correctly, he received and put 2 or 3 ballots in the box.

Q. Did you see him?—A. Yes, sir.

Q. What did he do when he received the ballots?—A. The same as Mr. Hamilton; he called the number and the name.

Q. Then what did he do with the ballots?—A. He put them in the box.

Cross-examination of Mr. Preston by Mr. ADAMS:

Q. If you got a ballot that was not voted at the head of the ticket at all, just some one or more candidates were marked—that is, there was a mark before the names—how, in the first instance, did you count that ballot?—A. That was laid out and was not counted with the straights and splits, and each man was given credit for just the vote on that ticket.

Q. He was given credit for the votes on that ticket?—A. Yes, sir.

Q. Did you use any plus-and-minus system with reference to such ballots as that?—A. We did not.

Q. You didn't use that plus-and-minus system with reference to that?—A. We gave each man credit voted for on that ticket.

Q. You didn't apply the plus-and-minus system to such a ballot as I have just asked you about at all?—A. We didn't include that in the straights and splits.

Q. You didn't apply the plus-and-minus system to that kind of a ballot?—A. No, sir; we could not.

Q. How many ballot boxes did you have there that day?—A. If I remember right, two.

Q. Do you remember? What is your recollection?—A. There were two; one large one for the main ballots, and I think the small one had the amendments in.

Q. On woman suffrage?—A. Yes, sir.

Q. And the amendments to the constitution?—A. Yes, sir.

Q. And the larger box was the one in which you put all the ballots, including the ballots that had the votes on them for Representative in Congress?—A. Yes, sir.

Q. Now, you destroyed that ballot, I suppose, because there was an excess of ballots in the ballot box, didn't you?—A. No, sir.

Q. You didn't do it for that reason?—A. No, sir.

Q. What reason did you destroy it for?—A. I can't remember at the time just exactly what was the matter.

Q. But you didn't destroy it because you had an excess of ballots in the ballot box?—A. No, sir; at the time it was put in the box, if I remember rightly, the ballot was not voted at all, or something; I don't just remember about that.

Q. You did not destroy that one ballot there because the whole number of ballots were in excess of the number of electors was one, did you?—A. I don't understand the question.

Q. You didn't destroy that one ballot on account of that being in excess of the whole number of ballots. You didn't destroy that one ballot there because the whole number of ballots exceeded by one the number of electors voting?—A. No, sir.

Q. As shown by your poll book?—A. No, sir.

Q. What right did you have—do you claim you had there—to destroy that ballot at all; do you know of any legal authority for it?—A. It was there and there was nothing else to do but destroy it.

Q. It was in the ballot box when you opened it?—A. If I remember right, it was in with the rest of them.

Q. It was in with the ballots—in the ballot box when you opened it up to begin your count—the one that was destroyed?—A. I think that is the way of it.

Q. Your board took it upon itself to destroy that ballot after you took it out of the ballot box? The board took it upon itself to destroy that ballot and did destroy it?—A. There was nothing on the ballot to destroy.

Q. Whether there was anything on the ballot or not, it was a ballot that was taken in with the other ballots that were put that day in the ballot box and was there when you opened it and began the count?—A. It was in the box.

Q. With the other ballots that had been voted?—A. Yes, sir.

Q. And you destroyed it?—A. We destroyed the ballot; but there was nothing on it.

Q. What did you do with it—what was done with it; did you finally tear it up?—A. No, sir; it was put back in with the rest of the ballots.

Q. Your return shows that you destroyed it; did you destroy it or not? I call your attention now to Exhibit 15, to the return of your board of election, and it shows you destroyed one ballot; how did you destroy it?

Mr. FRANKHAUSER. I object to the cross-examination; it is immaterial to the case.

A. If I remember right, that word "destroyed" would be better if you would put it "unused."

Q. It says "destroyed"?—A. Yes, sir; that is the way it is written in this list of voters.

Q. Don't you know that the only right that you had to destroy a ballot at all that day was because it was in excess of the number of votes voted in the ballot box?

Mr. MAYNARD. I object to his asking what his legal knowledge is.

A. I have answered it the way I recollect it, and that is all I can tell you about it.

Q. You can answer the question I just put to you.—A. There was nothing on the ballot; we couldn't count it for anybody; it was in there and showed 310 ballots, and when we counted there was the total number of straights and splits and this ballot had nothing on that we could count.

Q. You located in that ballot box 310?—A. Yes, sir.

Q. You had 310; what did you destroy the one for?—A. There was nothing on it to count.

Q. Your return as shown by Exhibit 15, where it says, "Whole number of ballots in excess of the number of voters voting and destroyed was one." That is not true?—A. It was true.

Q. If true you didn't have any ballots in the ballot box in excess of 310?—A. We had 310 in the box.

Q. If you had 310 in the box your election return is not true when you say, "Whole number of ballots in excess of the number of electors voting and destroyed was one"; that is not true, is it?—A. I don't know what the book says; I know the ballot was simply unused and we could not count it.

Q. Look at this page 16 of Exhibit 15 and see whether I read it correctly, "Whole number of ballots in excess of the number of electors voting and destroyed"; do you see that?—A. Yes, sir.

Q. There were no ballots in the ballot box in excess of 310 votes?—A. There were 310 in the box, 309 counted and one unused.

Q. That is the only explanation you can make of it?—A. Yes, sir.

Q. The whole number of ballots counted on opening the ballot box was 309; is that true?—A. Three hundred and nine that we counted.

Q. "The whole number of ballots counted on opening the ballot box was 309." It says that on page 16 of Exhibit 15. Is that true—that statement contained there on page 16?—A. That is what it says, and it also says—

Mr. ADAMS. Never mind. I object to the witness saying anything else but to answer the question yes or no. If he can not answer it yes or no, he should say so.

Q. It says on that same page, "Whole number of votes cast according to the poll list is 310"?—A. Yes, sir.

Q. That is what the list shows?—A. That is what the list shows; we had 309 that we accounted for and one that could not be counted because there was nothing on it.

Q. You destroyed that one?—A. We didn't destroy it; we left it with the rest of them.

Q. Then that record where you say you destroyed it is not true. What did you mean by that; you say you didn't destroy it?—A. That was our version of it, that we could not count it.

Q. You do not say you didn't count it, but you say you destroyed it, and your return says so.—A. That is what is on there; that is what that says.

Q. You wrote in there in ink "one." didn't you? "The whole number of ballots in excess of the number of electors voting and destroyed was one." That is the printed part of your return?—A. Yes, sir.

Q. Then there is written in, after the word "was," "One" in ink?—A. Yes, sir.

Q. So your board wrote in the word "one"; somebody did. You say it was Mr. Gulde's writing?—A. It must be, as it is not mine.

Q. Is it?—A. I wouldn't swear to that.

Q. Anyway, the word "one" is written in there?—A. Yes, sir.

Q. So it reads now, "Whole number of ballots in excess of the number of electors voting and destroyed was one"?—A. Yes, sir.

Q. Who swore Mr. Barber in before he began to act as inspector that day?—A. I don't remember.

Q. Did anybody?—A. Somebody did.

Q. If you don't remember, why do you say somebody did?—A. There were several notaries around there that day.

Q. There might have been 20; do you remember whether anybody swore him in?—A. Somebody did, but I don't remember who it was.

Q. You have forgotten who swore him in, but you do remember he was sworn in?—A. Yes, sir.

Q. Now, Mr. Hamilton left about noon, did he?—A. About that time.

Q. And John C. Nichols acted awhile—John C. Nichols who was a candidate for circuit court commissioner?—A. I remember of his taking two or three ballots.

Q. He didn't take more than two, did he?—A. I couldn't tell you, but it was a very small amount.

Q. You were where you could see him?—A. Yes, sir.

Q. Did he take more than three?—A. I wouldn't say.

Q. You don't know how many he took?—A. It could not have been—

Q. Wait a minute; don't let us argue it; you are here to give us facts as you remember; your attorneys will take care and ask you about that after a while. You don't know, do you, how many he took? The question calls for your knowledge.—A. I would not positively state the number of ballots he took.

Q. You don't remember how many he took, do you?—A. No, sir; I do not, positively.

Q. You don't remember now how many he took?—A. No, sir; I did not at that time exactly.

Q. This was John C. Nichols's precinct in which he voted, was it not, in the second ward?—A. I believe it is.

Q. He voted in that precinct that day, didn't he?—A. Yes, sir.

Q. There is nothing on that book there, Exhibit 25, any plus or minus signs, are there, on that book opposite the names of any of the different candidates for Representative in Congress?—A. I don't understand that question.

Q. You have been talking about plus and minus on the other side; I want to know whether there are any plus or minus signs there?—A. Yes, sir.

Q. Where are they?—A. Opposite each name.

Q. Where is the plus?—A. On top.

Q. Do you see any plus sign there? Watch my questions and be sure what you are testifying to; just show whether there is a plus sign there opposite the name or anywhere near the name, or anywhere on that page where the different candidates for Representative for Congress appear; that is, on pages 12 and 13 of Exhibit 25, will you point it out to me?

Mr. MAYNARD. It may be admitted on the record that there are no characters there of plus or minus signs and no one has said there was.

Q. There is now as a matter of fact, after counsel has conceded it on the record, there are no plus or minus signs anywhere that you can find, plain or indistinct even, on pages 12 and 13 where the different candidates' names appear for Representative in Congress, are there?—A. There are no plus or minus characters.

Q. It is not written out in words "plus" or "minus" on those pages?—A. No, sir.

Q. So that if anybody who didn't know what you know about the way you claim to know about the way you counted that thing up, who took that Exhibit 25, they could not possibly figure that thing out the way you figured it out, could they?—A. There is no character I suppose as we put on top the plus and the minus on the bottom, that is the way I stated it five or six times.

Q. So that if anybody who didn't know what you know about the way you claim to know about the way you counted that thing up, who took that Exhibit 25, they could not possible figure that thing out the way you figured it out, could they?—A. No, sir; I can't answer it any different than I have.

Q. Now, then, this book, the printed book that was furnished your board there to put in your election returns and make your return upon and for keeping your count of the votes cast there November 5, 1912, is printed at the top of some of the columns to the right of the different candidates for Representative in Congress on the first column these words, "total straight votes"?—A. Yes, sir.

Q. So you would understand, would you not, that when you put down in figures in that column opposite any candidate's name, you were expected to put down the total straight votes you found down for him there that day?—A. That was the idea.

Q. You so understand it?—A. Yes, sir.

Q. In the next column of this Exhibit 25 has at the head printed there as a part of the book furnished the board, "Total split votes," hasn't it?

Mr. MAYNARD. I object to that as incompetent, irrelevant, and immaterial. There is no law or obligation that any officer of the election shall use any one of these returns; they can make them on a blank piece of paper if they desire; they are only for the aid of the officers and are only purchased for that purpose. They may be used in the way one person wishes to or another, but the result is the only thing that is important, no matter how arrived at, and there is no law that compels them to make tallies for splits or anything of that description there, but to arrive at the number of votes cast for the candidates and that is to be set down and returned and that alone, and unless it is shown that there has been some mistake made it is of no interest to anybody on earth how the clerks arrived at the result.

It appears that Mr. Carney got all the votes cast for him there and that Mr. Smith got no more than was cast for him there by this method and I object to any sort of testimony on that line as incompetent and immaterial.

Mr. ADAMS. I object to the remarks of counsel and the statements he has made as not based upon the facts in the case and as argumentative.

Q. The next column on this Exhibit 25 has at the head printed there as a part of the book furnished the board, "Total split votes," hasn't it, is that true?—A. The total split votes not counted—

Mr. ADAMS. I move to strike out the answer as not responsive to the question. The question is and you will have to answer it sooner or later and you may as well answer it now as later. I ask you the question whether it is not a fact that on page 13 of Exhibit 25 at the head of the page printed there on a printing machine there appears in the second column these words, "Total split votes." Is that true or not?

A. Can I ask you a question so I can understand it?

Q. No, sir. Can you answer that or not? I ask you the question whether it is not a fact that on page 13 in Exhibit 25 at the head of the page printed there on a printing machine, there appears in the second column these words, "Total split votes," is that true or not?—A. It is printed that way; yes, sir.

Q. It is printed that way?—A. Yes, sir.

Q. Opposite the name of John M. C. Smith under that heading of "Total split votes," you find 59 total split votes?—A. Yes, sir.

Q. Were those the total split votes that John M. C. Smith received there that day as shown by the tallies?—A. Yes, sir.

Q. John M. C. Smith got 59 split votes, did he; that was the total of his split votes?—A. That is the total of the split votes without any heading.

Q. Without any heading he got 59 split votes?—A. Yes, sir.

Q. Claude S. Carney under the heading, "Total split votes," are the figures 64?—A. Yes, sir.

Q. Now, Claude S. Carney received 64 split votes as shown by the tallies?—A. Yes, sir.

Q. There were 64 different ballots that were split for Claude S. Carney?—A. Yes, sir.

Q. Then the total straight votes and the total split votes had to give the number of votes each candidate received?—A. No, sir.

Q. It should not?—A. No, sir; it should not.

Q. There is a heading here on page 13 of this book which says opposite each column running down to the foot of the page and opposite each of these candidates for Representative in Congress, John M. C. Smith and Claude S. Carney, "Total votes received," in that column are there not the total of the straight votes and the total of the split votes?—A. No, sir.

Q. I notice here that there are two envelopes, one addressed to the board of county canvassers in care of the judge of probate or register of probate, Charlotte, with the election returns from the second ward of Charlotte, and in another envelope addressed to the county clerk, Charlotte, Eaton County, Mich., from the second ward of Charlotte, Mich.; now there are among those returns there, one statement book, one tally-sheet book, and one poll book?—A. Yes, sir.

Q. Are there any other election returns in either one of those envelopes I have just called your attention to besides the tally-sheet book, the poll book, and one statement book?

Mr. FRANKHAUSER. I object to the question. I think the record should show that these returns have been in there during this investigation, and the fact that the witness found no more returns or not, as shown by counsel's question.

can have no bearing on the fact whether they are all the returns or not; the county clerk or the judge of probate might be competent witnesses on that question.

(Last question read.)

A. I don't know.

Q. Look and see, please; they are before you.—A. I see these three books there.

Q. Look at the envelopes; they are before you.—A. I see two envelopes there.

Q. Will you look and see, please, whether there are any other returns in those than those three that I have just mentioned in those envelopes?—A. There is nothing in the envelopes at the present time.

Q. You have looked at that one, have you?—A. I don't see any in those two envelopes.

Q. Those are the only returns you find there in connection with those two envelopes, those three books—the tally-sheet book, the poll book, and the statement book?—A. That is all that has been lying on this desk.

Q. You will notice the writing on one of the envelopes addressed to the county clerk with the returns from the second ward, Charlotte, Eaton County, written on the corner "Statement book missing," don't you?—A. Yes, sir; I see that.

Q. Did you go to your meals while you were there on election day working on that election board?—A. Yes, sir.

Q. Did you go out at noon?—A. I went for lunch.

Q. How many minutes; 5?—A. Perhaps 15.

Q. Did you go to lunch and get your lunch?—A. Yes, sir.

Q. How far did you go?—A. About two blocks.

Q. To a restaurant?—A. No, sir; I went home.

Q. To your home?—A. Yes, sir.

Q. It took you 15 minutes, you think, to walk two blocks and get your lunch and get back?—A. About that.

Q. And get on the board again?—A. Yes, sir; I had my wheel.

Q. Did you go out to supper?—A. Yes, sir.

Q. How long were you gone to supper?—A. About 10 minutes.

Q. Where did you go to supper?—A. Over to the restaurant right around the corner.

Q. What time did you go to supper?—A. About 4.30.

Q. Were you out any other times that day while the board was in session there taking any votes or counting?—A. No, sir.

Q. You are working in the bank that John M. C. Smith has charge of—Congressman Smith?—A. Yes, sir.

Q. You were working in that bank, were you, employed in that bank, on November 5, 1912, when you acted on this election board?—A. Yes, sir.

Q. How long have you been working in John M. C. Smith's bank?—A. About four years and a half.

Q. How long has John M. C. Smith been connected with that bank?—A. I couldn't say.

Q. Was he connected with it when you began working in it?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Mr. Preston, was that a true count of the votes received in the second ward of that election?—A. Yes, sir.

Q. Does that show the correct return as to John M. C. Smith?—A. Yes, sir.

Q. To make it plain, opposite John M. C. Smith's name appears in the column of "Total straight votes" what number?—A. Sixty-five.

Q. And in the column "Total split votes" what number?—A. Fifty-nine.

Q. That 65 and 59 represent what?—A. The total straights and the total splits.

Q. Was that the Republican vote?—A. Yes, sir.

Q. Claude S. Carney has what number of total straights before his name—A. Forty-eight.

Q. And the total split votes?—A. Sixty-four.

Q. What do those two indicate?—A. The total straight and total split Democratic votes.

Q. The total Democratic vote?—A. Yes, sir.

Q. Then following John M. C. Smith's name are some tallies; those below the line represent what?—A. They represent the minus vote.

Q. Are those what he lost there—his own ticket?—A. Yes, sir.

Q. Then above the line are called what?—A. The plus vote or those he gained by the splits.

Q. Those that he gained from other parties?—A. From other parties.

Q. Then when you take the minus from the plus and add that to the total straight and total split votes, does that form the total number of votes received?—A. Yes, sir.

Q. Of that election?—A. Yes, sir.

Q. The amount is how much?—A. One hundred and sixty-one for John M. C. Smith.

Q. Is that a correct computation according to your record?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. These books you used here in the second ward of Charlotte for making out your election records at that election held November 5, 1912, were mere printed forms of books that were used throughout this county?—A. I couldn't say; I saw no other books.

Q. You have seen no other books?—A. No, sir.

Q. You haven't looked through all these election returns?—A. Nothing only in our own ward.

Q. These books were furnished your election board by the county clerk, weren't they, of the county of Eaton?—A. I suppose that is where they got them.

Q. Do you know?—A. I wouldn't swear where they came from.

Mr. MAYNARD. I object to that, if he doesn't know.

WILLIAM CLEMENTS, being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. You live where?—A. Township of Carmel.

Q. How long have you lived there?—A. Do you mean this last time or all my life?

Q. All your life.—A. About 30 years.

Q. How long this last time?—A. Eight years.

Q. How old are you?—A. I am 58.

Q. What is your business?—A. I am a farmer.

Q. How far do you live from the city of Charlotte here?—A. About 3½ miles.

Q. Do you vote in the township of Carmel?—A. Yes, sir.

Q. Did you vote there November 5, 1912?—A. Yes, sir.

Q. What time in the day?—A. Just after dinner.

Q. I wish you would tell on the record here just what occurred there with reference to the counting of the votes after dinner?—A. Well, now, I don't know as I understand what you mean.

Q. Tell from the start about counting those votes; how they came to count them, if you know?—A. Well, I went up there just after dinner, and the supervisor was talking about the box getting so full it was a hard matter to get the tickets in. And I heard a little talk after that about emptying the box out and counting them; I just heard a little talk about that.

Q. Where were you when you heard this talk?—A. I was right there in the room.

Q. Now, was the voting place separated from the outside by a railing?—A. Yes, sir.

Q. You were outside when you heard this talk?—A. Yes, sir.

Q. What occurred after you heard this talk?—A. I went outdoors and was talking around with the men, and the first thing the clerk came out and called me.

Q. D. C. Cole?—A. Yes, sir; and asked me to come in and help count the tickets.

Q. Did any of the other members of the board invite you to help do this?—A. No, sir.

Q. Were you sworn?—A. Yes, sir.

Q. Did you begin your work?—A. Yes, sir.

Q. Do you remember who swore you?—A. W. L. Huber.

Q. He is a justice of the peace, you understand?—A. Yes, sir.

Q. After you were sworn what did you do?—A. We began to count the tickets that were in the box.

Q. I understood you that the box hadn't been emptied before you came in?—A. Yes, sir; when I came into the room the ballots were lying on the table.

Q. Who did the reading of the ballots?—A. W. L. Huber.

Q. Who did the tallying?—A. Cortez Cushing and myself.

Q. State what you and Mr. Cushing did in the way of comparing your tallies.—A. Whenever Mr. Huber would read off a name or a vote for one man I would say the number of votes that there was, 1, 2, or 3, whatever there was, and if they corresponded with the other man he wouldn't say anything; if they didn't he would speak about it.

Q. Did you have to back up once or twice that day?—A. I think there was twice in the whole afternoon that there was one difference.

Q. What did you do about it?—A. We just took and went back over them to see which one was right.

Q. Counted all the tickets clear back?—A. All the tickets we had gone over we counted over again for that name.

Q. Do you remember what office it was you disagreed on?—A. No, sir; I do not.

Q. As long as you counted, state whether or not you and Mr. Cushing kept together.—A. We were together except, I think, twice; that one difference on one man; but when we were through we were alike.

Q. You agreed and got together where you were off that one?—A. Yes, sir.

Q. How long did you count or tally?—A. Well, there were just three or four tickets left when the polls closed at 5 o'clock, and I helped finish what was on the table.

Q. But you didn't get through when the polls closed?—A. No, sir.

Q. About how many tickets did you tally, you and Mr. Cushing?—A. As near as I can remember, we tallied 140—about 140.

Q. Did you tally those votes honestly and correctly as they were read?—A. Yes, sir.

Q. Did you give Claude S. Carney credit for every vote he received?—A. Yes, sir.

Q. And John M. C. Smith likewise?—A. Yes, sir.

Q. When 5 o'clock came or about that time and the polls closed, what did you do?—A. I went home.

Q. That was the last you knew about it?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. So there were left all the ballots that had been voted there from the time you opened that ballot box and began counting, those you helped count, still left there to be counted?—A. Yes, sir.

Q. You say that you assisted in counting about 140 of the ballots that were cast there that day?—A. Yes, sir; as near as I can remember.

Q. That is all you helped count?—A. Yes, sir.

Q. Then somebody else perhaps took your place?—A. Yes, sir; I suppose so.

Redirect examination by Mr. FRANKHAUSER:

Q. When you tallied there in the afternoon you used a tally book like that Exhibit 17?—A. Yes, sir; something like that.

Q. Can you tell by looking that over whether that is the one you kept or not?—A. I don't think I could; I didn't fill it out at all; I simply made these tallies—these straight marks.

Q. You put these down as they were read off to you?—A. Yes, sir.

Q. These figures in the column "Total straight votes" and "Total split votes," you don't recognize that those are yours?—A. They were not down when we got through counting; they would not be put down until the close, or the finish.

Q. When you left at 5 o'clock somebody else took your place?—A. Yes, sir.

HERMAN GULDE, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Second ward, Charlotte, Eaton County, Mich.

Q. How long have you resided here?—A. Twenty-five years.

Q. Are you a married man?—A. No, sir.

Q. Do you live with your parents?—A. Yes, sir.

Q. On West Lawrence Street?—A. Yes, sir.

Q. Were you present at the general election held in the second ward of the city of Charlotte on Tuesday, the 5th day of November, A. D. 1912?—A. I was.

Q. Did you hold any official position on the election board?—A. I was one of the clerks.

Q. You heard the testimony of Mr. Preston, the other clerk?—A. Yes, sir.

Q. Do you remember anything about what was done with the books that night when you got through with the election?—A. I don't remember anything particularly except the sealing; I remember that very distinctly.

Q. How many packages were sealed up?—A. Two, I think, besides the ballot boxes; they were sealed.

Q. Do you know what was put in those envelopes that were sealed up?—A. I don't know positively; no.

Q. Do you know what was done with them?—A. I remember that Mr. Barber took one to the clerk's office; I suppose he went up there; he went upstairs.

Q. You don't know what he did with it, but he went upstairs?—A. Yes, sir.

Q. What became of the other one?—A. I don't remember.

Q. Did you see a package given to Judge Dann?—A. I don't remember seeing that.

Q. Do you know what was done with the boxes?—A. They were left there in the corridor, I think.

Q. Did you see or know of there being a vault in the corridor that opened into the corridor?—A. Yes, sir.

Q. Did you see it open during the day the election took place?—A. Why, it was open.

Q. You have been in there frequently?—A. Yes, sir.

Q. There is a vault there that opens into that corridor?—A. Yes, sir.

Q. At the west end of the rooms was a door also that opened into the room underneath?—A. I think there is a door there.

Q. Did you see that open?—A. No, sir; I did not.

Q. I show you Exhibit 25 and ask you whose handwriting that is?—A. That is mine.

Q. I show you Exhibit 26; whose handwriting is that?—A. That is also mine.

Q. I show you Exhibit 15 and ask you whose handwriting that is?—A. I don't know; that is not mine.

Q. The tally-sheet book, Exhibit 25, is the one you say you kept?—A. Yes, sir.

Q. During this election in question?—A. Yes, sir.

Q. Now, when you tallied a vote for Representative in Congress, I ask you, witness, what was first done?—A. On the first of the tally?

Q. Yes; begin at the beginning.—A. After the box was opened we sorted out the ballots, the straight Republican, Democratic, and so forth, and the split tickets, and I think we had a pile that had no heading at all; then we entered the total straight votes in the tally book opposite the name of each candidate; then we put down the total split votes in the tally book opposite the name of each candidate; then proceeded with the split ballots.

Q. I suppose you picked up the ballot, under this system, that had no heading, no mark at the head of it, and there was a check opposite the name of Claude S. Carney; you would plus Carney and that would mean a vote for him?—A. Yes, sir.

Q. Where would it be recorded, on the upper or lower line?—A. On the upper.

Q. It would make no difference whether there was a tally up here or not, it would be credited to him if it were cast for him?—A. Yes, sir.

Q. Under this system?—A. Yes, sir.

Q. In the first place, then, you gave each candidate the entire vote that his party cast in counting up the splits and straights?—A. Yes, sir.

Q. Then you commenced to read off, did you?—A. Yes, sir.

Q. And when it was shown that he had lost a vote on his own ticket somebody struck him off; you would say minus John M. C. Smith one and would set down a minus?—A. On the lower line, opposite John M. C. Smith's name.

Q. Suppose John M. C. Smith got a vote from some other party, you would say plus John M. C. Smith, and that would be a vote in addition to what he had received when you first credited him here?—A. Yes, sir.

Q. Where would you place that?—A. On the upper line.

Q. Did you do that?—A. Yes, sir.

Q. Is that the way you made that record there?—A. Yes, sir.

Q. When you got through how could you arrive at what the total would be of the total votes received at that election by him?—A. Why, the total—take the total straight votes and the difference between the plus and minus votes whichever—if it was a plus number of votes in his favor we added that to the straights, and if it was a minus against him we took away from the votes.

Q. Just to make that computation, how many votes were marked for John M. C. Smith first—straight votes?—A. Sixty-five.

Q. After you counted up those 65 Republican votes—Republican votes at the head that didn't have any mark on them?—A. Yes, sir.

Q. How many split Republican votes?—A. Fifty-nine.

Q. Add them together; how many would that be if he got no more than had been lost?—A. One hundred and twenty-four.

Q. He was credited with that amount of votes to start with, so many straights and so many splits?—A. Yes, sir.

Q. When they began to read the Republican tickets and somebody had been foolish enough to vote against John M. C. Smith, that was marked minus. How many minus votes were there?—A. Eight.

Q. Take that from the 124.—A. One hundred and sixteen.

Q. That would be 116 votes he got from the Republican Party?—A. Yes, sir.

Q. Now, he got the other votes from other parties?—A. Yes, sir.

Mr. ADAMS. I object to counsel leading the witness. He works the thing out mathematically, and puts the words in the witness's mouth, and asks him to answer yes or no; and I take an exception to that mode of examination. If it is so plain that anybody can figure it out the witness should figure it out and not counsel; and I take an exception to counsel's way of examining the witness.

Mr. MAYNARD. It appears in the record from the testimony already that the witness has already figured it out and has set down the result, and nobody has been able to show a mistake of any kind against it. What I have asserted has been proven by half a dozen witnesses, and it is only preliminary to what I am going to ask.

Q. What are those called?—A. Plus votes.

Q. How many did he get?—A. Forty-five.

Q. What did you do with the 45?—A. We added that to the 116.

Q. That made how many?—A. One hundred and sixty-one.

Q. Was that the method of computation which you used in all of these computations?—A. Yes, sir.

Q. Take Claude S. Carney's vote. How many straight votes did you give him in the first place?—A. Forty-eight.

Q. How many split votes did you give him?—A. Sixty-four, making 112.

Q. Democratic votes?—A. Yes, sir.

Q. Now state whether Claude S. Carney lost any of those.—A. He lost 20.

Q. That would leave him how many Democratic votes?—A. Ninety-two.

Q. Did he get any votes from other parties?—A. He got 15.

Q. That would make him how many in all?—A. One hundred and seven.

Q. Was that set down?—A. Yes, sir.

Q. Take the next fellow below; how many straights did you give him?—A. Three.

Q. How many were added to him by splits?—A. Total splits, 12.

Q. That would make how many?—A. Fifteen.

Q. Did he lose any?—A. He lost five.

Q. Did he gain any?—A. No, sir.

Q. Then the net result was what?—A. Ten.

Q. Take the next one; how many straights were given to him?—A. Three.

Q. How many splits?—A. Forty-one.

Q. Did he lose any of them?—A. Yes, sir.

Q. How many did he lose?—A. Twenty-five.

Q. How many did he gain?—A. He gained three.

Q. Then the result was what?—A. Twenty-two lost.

Q. Twenty-two was the total?—A. Twenty-two the total.

Q. Did you act as clerk of that election board at any other time?

Mr. ADAMS. Objected to as incompetent and immaterial.

A. Not until that day.

Q. Did you work all day?—A. Yes, sir.

Q. Were you there when they counted up at night?—A. Yes, sir.

Q. Who read the tickets?—A. Mr. Knowles.

Q. Was there anybody else there when Mr. Knowles was reading?—A. Mr. Nichols was there and, I think, Mr. Barber part of the time.

Q. Mr. Knowles read the whole of the ballots?—A. I think so; that is, all the large ballots; not the small amendment ballots.

Q. Could you hear what was read?—A. Yes, sir.

Q. Now, Mr. Gulde, I wish you would state whether or not you kept an honest and correct count and tally of those as read to you.—A. I did.

Q. What is your occupation?—A. I am a wheelwright.

Q. Where are you engaged?—A. On Main Street, across from the courthouse.

Q. What are your politics?—A. I am a Democrat.

Q. How long have you been a Democrat?—A. Well, ever since I have voted.

Q. Did you hear any electioneering by any person there in the voting place that day?—A. No, sir; I did not.

Q. Did you hear anybody there in the voting precinct urge any voter to vote for any particular or specific person?—A. No, sir.

Q. When they were counting up at night, did you hear John C. Nichols attempt to influence the count in any way?—A. He attempted to state how a vote should be read on circuit court commissioner.

Q. How was that?—A. A couple of times, I think, on account of there being a blank opposite his name on the Democratic ticket there was a misunderstanding as to how the vote should be read; one voter put a cross opposite Mr. Dean's name without scratching off the name opposite.

Q. What did he claim should be done in such a case?—A. When there was a cross opposite Mr. Dean's name and neither of the two other two names were scratched off, he said that vote should not be counted for Dean. And the same way when there was a cross opposite either of the Republican candidates' names, he claims that Dean should not benefit by that vote.

Q. Did he state why?—A. Because no choice had been shown; it did not show who was voted against.

Q. Was that caused by more than one candidate running for the same office?

Mr. ADAMS. I object to that as calling for the conclusion of the witness, and as incompetent and calling for what John C. Nichols said.

Q. Was that caused by more than one candidate running for the same office?—

A. Why, there were two candidates on the Republican ticket and just one on the Democratic ticket.

Q. That is on which ticket?—A. What do you mean?

Q. Which ticket was Dean on?—A. On the Democratic ticket.

Q. Which ticket was it that had two candidates for the same office?—A. The Republican ticket.

Q. How many candidates were there on the tickets running for that office?—

A. Well, three on the ballot, if that is what you mean.

Q. Was there a place to write in the name?—A. Yes, sir.

Q. Above the ballot—above Dean's name?—A. I think above; I am not sure.

Q. Do you know who was opposite Dean's name? Whose name appeared opposite his?—A. I think it was John C. Nichols and Frank Dean.

Cross-examination by Mr. ADAMS:

Q. One of the inspectors of that election, in the second ward, that day, handed out the ballots on one side of the booths, while another received the ballots on the opposite side of the booths and put them in the ballot box?—

A. Yes, sir.

Q. Did you go to your meals that day?—A. I went down town for my meals.

Q. Went to dinner?—A. Yes, sir.

Q. What time did you go?—A. I think it was about 11.30.

Q. Were you there when Mr. Hamilton left?—A. I don't know.

Q. Were you there when Mr. Barber came in and began to officiate there?—

A. I couldn't say as to that.

Q. Why do you say that?—A. I could not see across to the other side of the booths at all.

Q. They were on the other sides of the booths?—A. Yes, sir.

Q. So that at any time while the votes were being cast and were being put in the ballot box were all the inspectors on one side of the booth? There was no time when both inspectors were on one side or the same side of the booths?—

A. I couldn't say as to that; they were not sitting on the same side at one time; they might have been standing.

Q. At no time that day were the ballots handed out and received from the voters; handed out to the voters and received from the voters and put in the ballot box on one and the same side of the booth?—A. No, sir.

Q. The booths were between the man who handed out the tickets to the voters when they came in and before they went in the booths to mark them and the man who received the ballots from the voters and put them in the ballot box?—

A. Yes, sir.

Q. You were so situated, as one of the clerks of the election, that most of the time that day you could see both inspectors passing out ballots to the voters and the inspector who received the ballots from the voters?—A. No, sir; I could not.

Q. And that was so of the other clerk I suppose; at the time he was situated the same way you were, so he could not see the inspector who received the ballots from the voter?—A. If I remember he sat nearer to the end of the booths than I did and could see more on the other side than I could.

Q. Still he could not see both of those men when handing out the ballots and when taking them from the voters from where he stood?—A. I don't believe he could, not from where he was sitting.

Q. Did you go out to supper?—A. Yes, sir.

Q. What time?—A. Some time between 4 and 5 o'clock.

Q. Before the polls closed?—A. Yes, sir.

Q. Did you go out in the afternoon after you began the count?—A. No, sir.

Q. Not once?—A. No, sir.

Q. This Nichols that you say examined the tickets there that night when Mr. Knowles was calling them off was the John C. Nichols who was a candidate on the Republican ticket that was voted there that day for the office of circuit court commissioner?—A. Yes, sir.

Q. Now, if you had a ballot there that day that had no cross at the head of any one of the tickets that were on that ballot, but which did have a cross opposite some one or more of the names of the candidates on one or more of the tickets on that ballot that day, what did you do with that ballot?—A. In the first place we put that in a separate pile so that would not be in the straight Republican and not be a split ticket.

Q. So they were not counted in the plus or minus proposition?—A. Yes, sir.

Q. How were they counted in the plus and minus proposition?—A. When they were read off, what votes the candidates received on those tickets were counted plus.

Q. You counted plus and minus only on those tickets that were voted at the head, didn't you; had some splits somewhere?—A. No, sir.

Q. If you had a ticket that had no mark at the head, it would not come under either of those heads?—A. What heads?

Q. It would not come under the straight or split tickets?—A. No, sir.

Q. In determining the splits, you did not put down such a ticket as that, did you?—A. Not in determining the splits, we did not.

Redirect examination by Mr. MAYNARD:

Q. You are referring to the tickets that had nothing about them to indicate at the top which party they had voted for. What did you do with that ticket?—A. We laid it in a pile by itself, and when we came to read it or credit the different votes received by any candidates on that party on the plus list opposite their names.

EVANDER DUNNING, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside, Mr. Dunning?—A. Charlotte.

Q. Which ward?—A. The third ward.

Q. Charlotte, Eaton County, Mich.?—A. Yes, sir.

Q. What is your age?—A. I am 65 past.

Q. What is your occupation?—A. I am a farmer.

Q. Where is your farm?—A. About 2 miles west of Charlotte.

Q. Do you hold any official position in the city?—A. I am one of the aldermen from the third ward.

Q. You have a residence here in the city?—A. Yes, sir.

Q. Whereabouts do you live; out on the farm or in the city?—A. In the city.

Q. Were you alderman of the third ward of the city of Charlotte at the general election held in that ward on the 5th day of November, A. D. 1912?—A. Yes, sir; I was.

Q. Who was the other inspector of election besides yourself?—A. Mr. Dowdigan was the other alderman.

Q. John D. Dowdigan?—A. Yes, sir.

Q. In that ward did you appoint a clerk who acted as inspector of election with you?—A. Yes, sir; we appointed an extra inspector.

Q. Who was that?—A. George Barney.

Q. What did you do at the election?—A. I issued the tickets.

Q. You issued the ballots?—A. Yes, sir.

Q. What did Mr. Barney do?—A. He deposited the ballots in the box.

Q. What did Mr. Dowdigan do?—A. He initialed the ballots.

Q. Was there any Democratic inspector of that election there?—A. No, sir.

Q. Was there anybody that acted in that capacity—I mean challenger?—A. Yes, sir; two.

Q. Who?—A. George Gardiner and Jake Moyer.

Q. Was Mr. Gardiner in the polling place any?—A. He was, quite a good deal; Mr. Gardiner was there at times when Mr. Moyer was not there.

Q. Was Mr. Moyer there from the time the polls closed?—A. Yes, sir; he was there from the time they closed, and Mr. Gardiner was, too.

Q. Was there any representative of the Republican Party there?—A. Yes, sir; Mr. Sawyer—William Sawyer, I think.

Q. He is the man that manages the gas office?—A. Yes, sir.

Q. If you hadn't got the name right.—A. Yes, sir.

Q. Witness, did you at any time during the progress of that election, during the day, hear anyone electioneering for John M. C. Smith for Member of Congress?—A. No, sir; I did not.

Q. Did you mention his name there during the day in the polling place?—A. At one time.

Q. About what time of day was that?—A. Perhaps in the afternoon.

Q. To whom?—A. Well, it was casually that I mentioned it; it was not in any political—

Q. (Interrupting.) Tell it just as it occurred.—A. It was in the case of some man who came in for some—

Q. (Interrupting.) Who was he?—A. Mr. Tracy, a very old man.

Q. You had been well acquainted with him?—A. Yes, sir.

Q. What occurred?—A. The circumstances were that I was standing there and I had some tickets, and I had to stand up to initial them, and both of those old men were in and were at my back, and the door swung around and hit me. I was initialing these tickets, and these men were in here, and Mr. Moyer was on the side and I was there, and Mr. Dowdigan and I heard them talking there and turned around, and as I turned around I heard this old man say, "I want to vote for Mr. Storrs and somebody else," and I says, "How about J. M. C.?" and he says, "Yes; that is the man."

Q. Was that the only time you said anything about it?—A. Yes, sir.

Q. Do you know who he was talking to?—A. No, sir.

Q. Did you see his ballot at all?—A. No, sir; I did not. I was not in the booth; was not where I could see his ballot.

Q. Do you know whether he marked it or not?—A. I don't know anything about it.

Q. Did any voter apply to you or ask you for instructions of any kind that day about marking his ballot?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. Where did you stand with reference to where the man stood who passed out the ballots to the voters?—A. I was on the opposite side; on the west side of the booth.

Q. The man who handed out the ballots was on the east side?—A. Yes, sir.

Q. You could not see him?—A. No, sir.

Q. Who was handing out the ballots?—A. Mr. Dowdigan.

Q. Mr. Dowdigan was a Republican?—A. Yes, sir.

Q. And you were a Republican?—A. Yes, sir.

Q. And the other inspector, Mr. Barney, was a Republican?—A. Yes, sir.

Q. You selected Mr. Barney as an extra inspector, did you?—A. Yes, sir.

Q. Did the people there nominate him as an inspector?—A. No, sir.

Q. When was Mr. Barney sworn in as an inspector?—A. When all of us were sworn in, in the morning.

Q. He was sworn in by the city clerk?—A. I don't recall who swore us in there; we were all sworn in together, and I had the impression that it was Mr. Dowdigan or Mr. Moyer who swore us in; that is my impression.

Q. Is that your impression now?—A. Yes, sir.

Q. Your recollection is he swore you in personally?—A. We were all sworn in together.

Q. Your recollection is who swore you in?—A. Mr. Dowdigan or Mr. Moyer.
Q. He didn't swear himself in, did he, after he swore you in?—A. They swore in Mr. Moyer.

Q. Who was Mr. Moyer?—A. He was one of the clerks and a notary public.

Q. So one of the clerks was Mr. Moyer?—A. Yes, sir.

Q. M-o-y-e-r?—A. Yes, sir.

Q. There was no such man who was clerk of that election that day.—A. I beg your pardon, I have got the wrong election for Mr. Moyer; Mr. Fisher was the one.

Q. That was some other election?—A. Yes; I have been to so many.

Q. You are always on the board here?—A. Not always.

Q. Most always?—A. No, sir; only when I have been alderman.

Q. How long have you been alderman?—A. Six or seven years.

Q. Were you not on the election board before you were alderman?—A. Not in the city.

Q. Perhaps when you didn't live in the city?—A. No, sir; I have lived in the city between 13 and 14 years.

Q. You have been on the election boards out in the country?—A. Yes, sir; in Carmel.

Q. You have always been a Republican?—A. Yes, sir.

Q. You used to live in Carmel?—A. Yes, sir.

Q. And used to be on the election boards when out there?—A. Yes, sir; a good many times; I was in the township for 16 years.

Q. You were on the election board in Carmel for a number of years?—A. Yes, sir.

Q. You were a Republican then?—A. Yes, sir.

Q. Now, George J. Barney—who mentioned his name as inspector?—A. The board, I presume; it was talked over with the board, and I suppose he was chosen by the board.

Q. Have you any recollection about it?—A. No, sir; I know he was inspector.

Q. There were some people there when the polls opened, I suppose?—A. There always are; yes, sir.

Q. There were that morning of November 5?—A. Yes, sir.

Q. No one who were not going to act on that board proposed the name of George J. Barney there—made a motion that he should be one of the inspectors of election, did they?—A. No, sir.

Q. No such a motion as that was made?—A. Not that I heard.

Q. The people were not asked whether they wanted Mr. Barney; the people there, aside from those on the board as inspectors or clerks, were not asked to make any motion to have Mr. Barney act as inspector of the election, were they?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. I didn't hear them.

Q. You were there?—A. Yes, sir.

Q. So you and Mr. Dowdigan decided to have George J. Barney act as inspector without referring it to the bystanders there who were there at that time, and you had Mr. Barney sworn in as an inspector of that election?—A. Yes, sir.

Q. That is the way it was done?—A. Yes, sir.

Q. That is correct, isn't it?—A. Yes, sir.

Q. You stated that nobody asked for instructions in that ward that day?—A. Not that I heard.

Q. I understood you to say that nobody asked for instructions?—A. I didn't say so.

Q. Do you mean to say so now?—A. No, sir; I do not.

Q. You didn't hear anybody ask for instructions, that is the way you want to be understood?—A. Yes, sir.

Q. Is that right?—A. Only the man that was in the booth, that one.

Q. Did you go to lunch at noon?—A. Yes, sir.

Q. What time did you go?—A. Somewhere about half past 11 or 12 o'clock.

Q. Did the rest of the board go at the same time?—A. Yes, sir.

Q. Did any of the other inspectors go when you went?—A. Yes, sir.

Q. Who went the same time you went?—A. Mr. Barney.

Q. Mr. Barney and you went at the same time?—A. Yes, sir.

Q. That left one inspector there?—A. Yes, sir.

Q. That was Mr. Dowdigan?—A. Yes, sir.

Q. When you went to dinner, you and Mr. Barney, Mr. Dowdigan was handing out the ballots?—A. Yes, sir.

Q. Then if anybody voted when you and Mr. Barney were away to your lunch, Mr. Dowdigan passed out the ballots to the voters and also put them into the ballot box?—A. I will have to answer yes.

Q. There was no other inspector there to do it?—A. No, sir.

Q. You didn't appoint another inspector when you and Mr. Barney went to dinner, did you?—A. No, sir.

Q. You got back about what time?—A. We were gone about 20 minutes.

Q. Did you go home to dinner?—A. No, sir.

Q. Did Mr. Barney?—A. No, sir; he went with me.

Q. You both went together?—A. Yes, sir.

Q. You were gone about 20 minutes?—A. About that, I don't think more than that.

Q. How far did you go to your dinner?—A. Across the street and two or three doors down.

Q. Did you have a regular dinner or just a lunch?—A. A regular dinner.

Q. You went there and got back in 20 minutes?—A. They had it all ready as soon as we got there.

Q. Whether you had it arranged or not, you left the voting place, you and Barney, and you went to the place where you got your dinner and got your dinner and came back to the voting place and was only gone 20 minutes?—A. Yes, sir; about that.

Q. When you got back, did Mr. Dowdigan go to dinner?—A. Yes, sir.

Q. Were you and Mr. Barney there all the time that Mr. Dowdigan was gone to dinner?—A. Yes, sir.

Q. Did you go to supper that night?—A. Yes, sir.

Q. Who went at the time you went to supper?—A. I think—I will not be positive because—

Q. (Interrupting.) Do you think Mr. Dowdigan went?—A. I think one of the clerks.

Q. What time did you go to supper?—A. About perhaps 4 o'clock, or a little after.

Q. The polls hadn't closed yet?—A. No, sir.

Q. When you got back were both Mr. Dowdigan and Mr. Barney there?—A. Yes, sir.

Q. Did they go to supper at any time before or after you did?—A. Yes, sir.

Q. Did they both go together?—A. I think not.

Q. Did they go after you had been to supper?—A. Yes, sir.

Q. Which one went first?—A. I think Mr. Dowdigan's place I took.

Q. You passed out the ballots?—A. Yes, sir.

Q. Who received the ballots?—A. Mr. Barney.

Q. After Mr. Dowdigan got back did Mr. Barney go to supper?—A. I think that—I can't tell you that.

Q. You don't remember?—A. No, sir.

Q. Now, this old gentleman, Tracy, came in, or after he went in the booth, you heard him say that he wanted to vote for whom?—A. He wanted to vote for Mr. Storrs, our sheriff here.

Q. And you said to him, "How about J. M. C. Smith?"—A. I heard it and I says, "How about J. M. C.?" He says, "That is the man."

Q. About J. M. C., you meant John M. C. Smith, who was a candidate for Congress?—A. I meant John M. C. Smith; yes, sir.

Q. You didn't hear any electioneering there that day?—A. No, sir; I didn't hear any at all.

Q. Who was Mr. Sawyer; what was he doing there that day?—A. He was the Republican challenger.

Q. Did he have any written credentials from the Republican committee?—A. Yes, sir.

Q. You saw them, did you?—A. Yes, sir.

Q. Did he hand them to anyone?—A. Yes, sir; to me.

Q. What did you do with it?—A. I put it in a book there.

Q. Who was it signed by?—A. By the Republican chairman.

Q. Who was that?—A. I think, Mr. Boyle.

Q. Mr. Mosier, what was he?—A. A Democratic challenger.

Q. Mr. Gardiner, what was he?—A. He was a challenger.

Q. Mr. Gardiner was a John M. C. Smith man?—A. I don't know about that.

Q. You don't know about that?—A. No, sir.

- Q. The gatekeepers were Republicans?—A. I don't know; I don't know that.
- Q. Was there a man named Storrs a gatekeeper there that day?—A. Yes, sir.
- Q. Was he a Democrat, a Republican, or a Bull Mooser?—A. I don't know what he was.
- Q. Do you know Thomas Collins?—A. Yes, sir.
- Q. Do you know whether he was a Republican?—A. I don't know what his politics were.
- Q. You stated that Mr. Barney received the ballots?—A. Yes, sir.
- Q. All the time would you say?—A. Yes, sir.
- Q. Did you receive ballots any time that day?—A. No, sir.
- Q. Do you know whether Mr. Dowdigan received any ballots and put them in the ballot box at any time when you were there?—A. Not that I know of.
- Q. What time did you get through counting after you closed the polls?—A. I think about 1 o'clock in the morning.

Redirect examination by Mr. MAYNARD:

- Q. Mr. Dunning, when you were counting up who read the ballots?—A. Mr. Dowdigan.
- Q. What did you do while they were counting?—A. I looked over most of the time.
- Q. Did anybody else look over?—A. Yes, sir; Mr. Gardiner and Mr. Mosler; they watched the count.

Recross-examination by Mr. ADAMS:

- Q. What did you do with the books you had there in which you kept the election results?—A. We put part of them in the box.
- Q. Part of them in the box; what ones did you put in the box?—A. The poll book and the tally sheet in the box with the ballots.
- Q. Then what did you do with the box?—A. We sealed it up.
- Q. Locked it and sealed it up?—A. Yes, sir.
- Q. Now, you had two ballot boxes that were kept there that day?—A. Yes, sir.
- Q. Only two. And two statement books and two tally-sheet books?—A. Yes, sir.
- Q. Those were the only books; the only two kept there that day?—A. Yes, sir.
- Q. What books did you put in the ballot box?—A. We put those two that belonged in the box.
- Q. What ones?—A. The statement book and the tally sheet in there.
- Q. You are sure about that, are you?—A. I am not sure, no; I might be mistaken.
- Q. Well, now, let me call your attention here———A. I can't see without my glasses.
- Q. Well, put them on. I show you an envelope addressed to the board of county canvassers, care judge of probate or register of probate.—A. Yes, sir.
- Q. This envelope contains one return or statement of the votes of the result of the election held in the third ward, city of Charlotte, county of Eaton, State of Michigan. Now, then, I have just taken out of that envelope three books, poll book, tally-sheet book, and statement book of the election held on the 5th day of November, 1912, at the third ward, Charlotte, Eaton County, Mich.—A. Yes, sir.
- Q. Each one of them has written on the front page of it just what I read there?—A. Yes, sir.
- Q. You put those books, didn't you, in the envelope that night and sealed it up?—A. I didn't put them in there.
- Q. You saw them put in?—A. I don't know whether I saw them put in; I was there when they were put in, perhaps.
- Q. I show you another envelope; this envelope contains election returns as follows: One tally sheet, one poll book, and a statement of the vote, the result of the election held in the third ward of Charlotte, Eaton County, Mich., addressed to the county clerk of Eaton County, Mich., and I pull out of that envelope three books: one is a poll book of the general election held November 5, 1912, in the third ward of the city of Charlotte.—A. Yes, sir.
- Q. The next is a statement of the vote of the general election held November 5, 1912, third ward, city of Charlotte, Eaton County, Mich.—A. Yes, sir.
- Q. This is the tally-sheet book of the general election held November 5, 1912, third ward, city of Charlotte, Eaton County, Mich.?—A. Yes, sir.
- Q. There are two poll books, two statement books, and tally-sheet books of your election that you handed in there on the 5th day of November, 1912?—A. Yes, sir.

Q. If that is so, you could not have put in a tally sheet in the ballot box, could you; you didn't have any to put in?—A. They were put in afterwards.

Q. There being but two poll books in these returns that I have just shown you and two tally-sheet books and two statement books, you didn't have any poll book nor any tally-sheet book nor any statement book to put in the ballot box there that night when you left the election?—A. We put them all in.

Q. In where?—A. In the box.

Q. You didn't have any, did you—didn't have any of those books to put in?—A. I think we did.

Q. Where did you get them?—A. The books were made there we put in the box.

Q. You only had two poll books and two tally-sheet books?—A. Yes, sir.

Q. And two statement books?—A. Yes, sir.

Q. And your board returned them, respectively, to the county clerk and judge of probate, which being true, where did you get the books you put in the ballot box, if you put any in?—A. They are correct, are they not?

Q. I didn't ask you about the correctness; where did you get the poll book or any other book you put in the ballot box that night?—A. If we didn't put them in they were not in.

Q. I understood you so say that you did put some in.—A. We did put some books in there.

Q. Did you put the poll books in the ballot box?—A. I presume so.

Q. Did you?—A. I will not swear, I didn't put them in there.

Q. Did you see one put in?—A. The clerks of election did, I presume, what was right.

Q. Did you see the poll book put in the ballot box?—A. No, sir; I will not say.

Q. Did you see the tally-sheet book put in?—A. No, sir.

Q. Nor the statement book?—A. No, sir; I will not say.

Q. You will not say you did?—A. No, sir.

Q. You don't know whether the poll book and the tally-sheet book or the statement book or any one of the three were put in the ballot box that night?—A. No, sir; they were not put in right—

Q. You don't know whether the poll book, the tally-sheet book, or the statement book or any one of the three were put in the ballot box that night?—A. I know all the books we had were put in the box.

Q. You say you know they were?—A. All the books we had there were put in the box.

Q. You say you know that all the books were put in the ballot box?—A. We had two ballot boxes there.

Q. I am talking about the box in which you had deposited that day the votes for the different candidates for the different offices; that is the box I am talking about?—A. We didn't put all the books in that box.

Q. Did you put any books in that box?—A. Yes, sir.

Q. What books?—A. The proper books.

Q. What books did you put in that box?—A. The proper books that belonged there.

Q. Give the names of them?—A. I don't know which two, the proper books that belonged there were put in there.

Q. Did you know that the law required you to put in a tally-sheet book and a poll book in the ballot box?—A. Yes; and I bet you we did so.

Q. If you only had two poll books there that day and two tally-sheet books and two statement books, where did you get the poll book you put in there?—A. We put the poll book in the box where it belonged.

Q. Then, how did you get two poll books to return here, one to the judge of probate and one to the county clerk, if you put one in the ballot box?—A. We put the proper books in the ballot box.

Q. You don't answer the question. Where did you get the one you put in the ballot box?—A. We made it, of course.

Q. Did you make one there that day?—A. That day we made it there and that night.

Q. You must have got the form for making it somewhere?—A. If we didn't have the books, we didn't get them; that is all.

Q. You only had—you were furnished—the books were furnished you—the poll book and tally-sheet book and the statement book were furnished your board by whom?—A. By the county clerk.

Q. The county clerk only furnished for your election that day, November 5, 1912, two poll books, two tally-sheet books, and two statement books—I want to get at the facts—is that true?—A. I presume so.

Q. So, by the returns of the election you held there, that you helped to conduct on the 5th day of November, 1912, it appears in these envelopes here, in the one addressed to the county clerk, is a poll book, a tally-sheet book, and a statement book made out by your board that day. It appears in the one addressed to the board of county canvassers in care of the judge of probate that there is a statement book, a tally-sheet book, and a poll book returned by your election board of that November 5, 1912, election, so that your board returned to the county clerk and judge of probate for the board of county canvassers two poll books, two tally-sheet books?—A. We put them in there.

Q. You put them there just the same, though the public authorities did not furnish you any to put there?—A. We had those books that we made out there that went into the box.

Q. You put them all in the box?—A. We put the proper ones in one box and the balance in the other box.

Q. What ones did you put in the ballot box in which you put the ballots you counted that day?—A. The poll books and the tally-sheet books.

Q. Where did you get your poll book from?—A. Made it, of course.

Q. What do you mean?—A. We had two clerks, and they made two.

Q. Did you have any printed forms from which you made the poll books?—A. No.

Q. Then how can any poll books be here and still have been returned by your board to the county clerk and the judge of probate? They couldn't be in two places very well.—A. I will bet you if you open the box you will find them there.

Q. You would lose your bet.—A. I don't think it. I know we put them in there and locked them up and sealed them up, and I don't think that box has been opened yet.

Q. How do you suppose they got out of the ballot box?—A. I don't know, unless some Democrat stole them out.

Q. Where is the box?—A. In the city hall.

Q. How do you know it is in the city hall? When did you see it last?—A. Since election.

Q. How do you know it is in the city hall?—A. It should be there; it should be in the vault. I am pretty sure it is there. I am pretty certain I will not mislead when I say it is there now.

Q. Who took the returns away that night, if any were taken away, when you got through?—A. They were not taken away that night.

Q. Did your election board make any returns to the county clerk of that election held there November 5, 1912?—A. The clerk, I expect, did; we turned them over to the clerk.

Q. Did your election board make out any returns of that election to be sent to the judge of probate for the board of county canvassers?—A. Yes, sir.

Q. Put them in an envelope?—A. Yes, sir.

Q. You put a statement book, a tally-sheet book, and a poll book in the envelope?—A. I don't know; I am not positive about that. We put in what was proper to be put in.

Q. You don't know what they put in, do you?—A. No, sir.

Q. And you made out another envelope to the county clerk?—A. Yes, sir.

Q. Do you know what returns you put in those?—A. The proper books were put in there.

Q. I ask you to tell me the names of the books?—A. The clerks put those books in there. I am sure they were put in right.

Q. Tell me the names of the books you put in the envelope addressed to the county clerk.—A. The poll book and tally sheet, probably.

Q. Do you know whether they were put in that envelope or not?—A. I think they were.

Q. You say there should be a poll book and a tally-sheet book?—A. Yes, sir.

Q. Was that all in the one addressed to the county clerk, as you understood?—A. The proper books were put in there.

Q. Was there a tally-sheet book and a poll book; were they the only books, as you understand it, that you were required to put in the envelope you sent to the county clerk?—A. The proper books were put in there.

Q. Will you answer my question?—A. I have.

Q. I asked you whether the tally-sheet book and the poll book were the only books to be put in the envelope addressed to the county clerk?—A. I have answered that question. They were put in; all the books proper to be put in there.

Q. Did you put a statement book in the envelope?—A. I think so.

Q. Did you put a statement book in the envelope addressed to the board of county canvassers?—A. I think so.

Q. Did you put a tally sheet in the envelope addressed to the board of county canvassers?—A. We put the proper books in the envelopes.

Q. What books did you put in there; whether they were proper or improper; did you put a tally-sheet book in there?—A. We fixed those envelopes and books.

Q. Did you put a tally-sheet book in the envelope that you addressed to the board of county canvassers in care of the judge of probate?—A. Yes, sir.

ERNEST G. PRAY, being duly sworn to testify the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. In Windor township; that is my residence; I am in Charlotte.

Q. What county?—A. Eaton County.

Q. On a farm are you?—A. I am a farmer.

Q. Have you held any county offices?—A. Yes, sir.

Q. What?—A. I was clerk of Eaton County nearly four years.

Q. That included when?—A. My term of office expired; my resignation was to take effect on the 3d day of November or on the 4th day of November, 1912.

Q. What year?—A. 1912.

Q. Do you know when the general election of 1912 took place?—A. On the 5th day of November, 1912.

Q. When did your term expire; when did your resignation take effect?—A. My resignation was handed to the circuit judge on the 2d day of November.

Q. When to expire?—A. To expire on the 4th; to take effect upon the 4th of November.

Q. The day before election?—A. Yes, sir.

Q. Do you hold any official position now?—A. Yes, sir.

Q. What is it?—A. I am the representative from Eaton County in the legislature.

Q. When were you elected?—A. On the 5th day of November, 1912.

Q. Were you here in the city of Charlotte on the day of the general election, held on Tuesday, November 5, 1912, in the second ward?—A. Well, I got into the city after dark.

Q. Were you here that day?—A. About 5 o'clock; yes, sir.

Q. Were you in that voting precinct?—A. Yes, sir.

Q. Were you out of town during the day?—A. Yes, sir.

Q. Where did you go?—A. To Windsor Township to vote.

Q. Did you vote?—A. I cast my vote; yes, sir.

Q. When you returned to Charlotte, did you go to the voting precinct of the second ward here in the city of Charlotte?—A. Yes, sir.

Q. Were you present when they completed the counting of the votes?—A. Very soon after the vote was completed; I was there two or three times during the counting, while they were counting.

Q. Did you on that evening, at any time, take away a bundle of ballots with you?—A. Yes, sir.

Q. What were they?—A. They were instruction ballots.

Q. Where did you take them?—A. Well, I took them; I kept the returns of the second ward there at that time on one of those ballots, then I took that one with the others I gathered up, and I think I went into the clerk's office, and then took those instruction ballots over to the Republican headquarters.

Q. Did you let anybody else have any of those ballots at any time that evening?—A. Well, I couldn't say.

Q. What were they delivered there for?—A. For the purpose of taking the votes.

Q. Keeping a tally of the votes?—A. Yes, sir; of the votes that were cast as they were reported over the telephone that evening.

Q. Now, did you take any ballots other than instruction ballots away from that booth that evening?—A. No, sir.

Q. Did you handle any ballots that were unused there that day at that polling place?—A. No, sir.

Q. Mr. Pray, I understand that Mr. Carney sets up by his notice of contest that you resigned from your office as county clerk, and that there was some conspiracy between yourself and John C. Nichols, that John C. Nichols might be appointed in your place, so that he could handle those returns and help

defraud Mr. Carney in some way with the returns; I ask you whether anything of that kind did exist between you and John C. Nichols?—A. There did not.

Q. Did you have any understanding with John C. Nichols prior to your resignation about his taking your place?—A. Yes, sir.

Q. What was it?—A. After I talked with Judge Smith—I could not give the date, but I am quite positive it was the last day that Judge Smith held court. I think there was a chancery matter on, that was all—and I informed Judge Smith that I expected, on account of a constitutional provision regarding those matters, that I would hand in my resignation.

Q. As county clerk?—A. Yes, sir. Of course, there was some conversation between the court and myself at that time as to what the constitutional provision was, and I am sure that I do not call to mind just how Judge Smith spoke.

Mr. ADAMS. I object to the witness stating what Judge Smith said or what this witness said to Judge Smith as hearsay and incompetent.

A. "If you drop out of the"—Judge Smith said this—"If you drop out, the most natural thing for me to do would be to appoint John C. Nichols as your successor to fill your unexpired term," as he was at that time my deputy. I recollect distinctly of the court saying that Nichols was more familiar with the duties of clerk than any other person in and around the county seat—something to that effect. I am not sure, but I am quite positive that I did not see Mr. Nichols that day; but within a day or two I saw Mr. Nichols—that is, he came into the office, and I told him what the court had said, and I am quite positive I asked him if—

Mr. ADAMS. I object to the conversation that the witness is about to relate with Mr. Nichols as incompetent, irrelevant, and immaterial and hearsay.

A. (continuing). He would accept the appointment. I think he said there at that time that he would if the judge saw fit to appoint him.

Q. Was there any agreement between you and him in regard to election matters?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. Mr. Nichols was your deputy before you resigned?—A. Yes, sir.

Q. He was the only deputy you had?—A. No, sir; I had a young lady, who was the active deputy in the office.

Q. Mr. Nichols had not been your active deputy, had he?—A. Well, no, sir; not active in the office.

Q. The deputy county clerk, the one who was active in the office at that time, was who?—A. Miss Edna Lohr.

Q. She was the active deputy employed in your office right along, doing the work under you in the office for how long?—A. Why, about five months, I think, four or five months.

Q. Did she become one of your deputies—or before that, before she became one of your deputies—did you have some other deputy actively engaged in the office?—A. I think along about February or the latter part of January or the 1st of February my deputy, who had been with me three years, resigned.

Q. Who was that?—A. Mrs. Fairchilds.

Q. Mrs. Fairchilds had been your active deputy for about three years before Miss Lohr became your active clerk?—A. Yes, sir.

Q. Then Miss Lohr became your active deputy clerk?—A. I was without an active deputy clerk for two or three months, and Mr. Nichols helped me out at times when the board of supervisors was in session, and at court time until Miss Lohr was engaged by me.

Q. Where were you on the 5th day of November, 1912, out in Windsor Township?—A. Yes, sir.

Q. That was your voting place?—A. Yes, sir.

Q. What time did you go out there on that day?—A. I went out—I started away from Charlotte a little after noon on the 4th and stayed over night at my father's.

Q. So that you were out there in Windsor Township the day of election, November 5, 1912, up to what time?—A. Well, I don't know just what time I left Dimondale, but I came to Potterville with my wife and son in time for them to take the 4.17 train for Charlotte here.

Q. Was Diamondale in Windsor Township?—A. Yes, sir.

Q. Where was the election held?—A. In the village of Dimondale.

Q. You got back to Charlotte about what time on the 5th of November, 1912?—

A. Half past 5 o'clock I should say.

Q. Were the polls closed then in the second ward?—A. Yes, sir; they were counting when I went down to the polls the first time, I know.

Q. Did you visit any of the other polling places in the city outside of the polling place in the second ward that day?—A. I am not quite sure that I went into the polling place in the third ward or stepped up on the porch as I came from the house to the office.

Q. Did you draw the salary or any part of the salary of county clerk after November 4, 1912?—A. No, sir.

Q. Or did you have any arrangement to draw any of it?—A. No, sir.

Q. You haven't drawn any of it up to this time?—A. I should think about that—

Q. (Interrupting.) I mean that accrued after November 4, 1912?—A. No, sir.

Q. No fees or salary have you drawn that accrued in the county clerk's office from and after November 4, 1912?—A. No, sir.

Q. That is correct?—A. That is correct.

Q. Your resignation, you say, you handed in when?—A. I think the 2d day of November, but I could not be positive now.

Q. Do you know when John C. Nichols was appointed by the judge county clerk?—A. Why, my resignation, I believe—I believe Judge Smith sent the appointment of Mr. Nichols back to me, at the same time he returned my resignation with his acceptance.

Q. Judge Smith's acceptance of your resignation?—A. Yes, sir.

Q. He sent them to you?—A. Yes, sir; they were addressed to me.

Q. What did you do with them?—A. I opened the letter; I was in the clerk's office.

Q. Where did you finally put them?—A. They were filed.

Q. Where?—A. In the office of the clerk.

Q. The county clerk?—A. Yes, sir.

Q. Then did John C. Nichols begin to act right away?—A. Well, I suppose that Mr. Nichols was there on the 4th; I was not during office hours at all.

Q. When did you cease to act as county clerk?—A. I should say the last duties I performed as county clerk were Saturday night. The 2d, or 3d, was Sunday, and there was no business on Sunday.

Q. Then you didn't perform any duties as county clerk after Saturday night prior to November 5, 1912?—A. No, sir.

Q. You still retained the keys to the county clerk's office after Saturday night, November 2, 1912?—A. Yes, sir; I had the keys to the office.

Q. How long did you keep that key?—A. I think I turned the keys over to—

Q. (Interrupting.) The question is how long you kept them?—A. Up until the first—up until the last, about the 30th of December, I think.

Q. Up to the 30th of December, 1912?—A. Yes, sir; I had the key to the clerk's office.

Q. And went in whenever you wanted to?—A. Yes, sir; I could go in when I wanted to.

Q. On election day when you got back from Windsor Township you gathered up some instruction ballots that were handed out there, you say?—A. They hadn't been handed out; they were scattered around.

Q. Where did you get them?—A. Well, I think one of the inspectors of election handed me several that were still lying on the table in the polling place.

Q. Where?—A. In the second ward.

Q. Those were the ones that you had furnished as county clerk?—A. Yes, sir; I don't know as to that.

Q. Were they not, as a matter of fact, instruction ballots that you, as one of the public authorities had furnished to that election board?—A. I couldn't say.

Q. They were printed on what, yellow?—A. Yes, sir; on yellow paper and marked "Instruction ballot."

Q. The official ballots I am talking about that were used by the different election boards in Eaton County, Mich., for that election of November 5, 1912, were procured by those election boards, where?—A. The board of election commissioners prepared them.

Q. Were they not distributed through your office as county clerk?—A. Yes, sir; the official ballots were.

Q. The ballots that the voters voted were the official ballots?—A. Yes, sir.

Q. Those were required by law to be distributed through your office?—A. Yes, sir.

Q. You had all the election ballots put up in packages for the various voting places in the county?—A. Yes, sir.

Q. Then somebody, either the supervisor of the township or the clerk, I suppose, came in from the various townships and you handed the ballots for that particular township to the clerk or supervisor?—A. Yes, sir; or other responsible person.

Q. That is the only way the official ballots for the voters used to vote could be procured, was it not?—A. Yes, sir.

Q. The ballots that relate to the general election of November 5, 1912—the official ballots I am talking about—that were used in the City of Charlotte, where were those official ballots obtained from?—A. From the same source.

Q. From your office?—A. Yes, sir.

Q. You furnished the tally-sheet books, the statement books, and the poll books for all of these various precincts in the county of Eaton for that November 5, 1912 election, didn't you?—A. Yes, sir.

Q. They were all alike, were they not?—A. Yes, sir.

Q. All those books?—A. Yes, sir.

Q. For each voting place you furnished two poll books, two statement books, and two tally-sheet books, didn't you?—A. Yes, sir.

Q. And no more?—A. That is all.

Q. Now, these tally-sheet books, statement books, and poll books were likewise handed out under authority of law through you as county clerk of the county of Eaton, were they not?—A. Yes, sir; in the same package.

Q. So that if any statement book or any tally-sheet book or any poll book was used and put in the ballot boxes on the 5th day of November, 1912, either the tally-sheet book, the poll book, or statement book that were obtained—they were obtained otherwise than by lawful authority?—A. That we didn't get through the clerk's office?

Q. From anybody else in the county of Eaton not authorized to hand out any tally-sheet books or statement books or poll books. Do you know of any one else that was authorized to hand those out on the 5th day of November, 1912?—A. Not that I know of.

Q. I suppose you have been a Republican in politics for a number of years?—A. Yes, sir.

Q. How long?—A. Since I can remember.

Q. Your age is what?—A. Thirty-eight.

Q. The official ballots handed out at these various voting places were printed, were they not?—A. Yes, sir.

Q. Who printed them for this county?—A. The Charlotte Tribune printed the ballots for the general election, but I could not be positive whether they printed the ballots for the—it was between the Charlotte Republican and the Charlotte Tribune; one printed the ballots for the primary election and the other for the general election, I think; the Tribune had one and the Republican had the other. I think the Tribune printed the general election.

Q. That is the one on which the Representative for Congress had their names printed?—A. Yes, sir.

Q. And that was the only ballot voted at that election that had any officers on; they were all on the same ballot?—A. Yes, sir.

Q. All the different tickets were all on the same ballot?—A. Yes, sir.

Q. They had to go through your office, if a legitimate ballot?—A. Yes, sir.

Q. Now, Mr. Pray, you did not publicly announce your resignation until when?—A. I don't know that it was ever publicly announced.

Q. You didn't announce it until about the 12th of November, did you?—A. I never announced it, to my knowledge; never publicly announced it.

Q. On election day you did not tell it around any that you had resigned?—A. Yes, sir.

Q. Whom did you tell it to?—A. Why, I don't know that I can recall; a number of different people knew it.

Q. It did not appear in the newspapers in Charlotte, did it?—A. No, sir; nor in the county.

Q. It did not appear in any newspaper in the county up to as late as November 12, 1912?—A. I am of the impression that the Bellevue Gazette published it before that; I couldn't say as to the date.

Q. If the Bellevue Gazette published it before the 12th of November, 1912, when did it publish it as near as you can recollect?—A. I couldn't tell you; I can tell by the files of the paper.

Q. Do you say it had been published in the Bellevue Gazette as early as the 8th day of November, 1912?—A. I don't remember.

Q. Isn't it your recollection that it was not published as early as the 8th day of November, 1912, even in the Bellevue Gazette?—A. I couldn't say; I am of the impression—I can tell by looking at the papers.

Redirect examination by Mr. MAYNARD:

Q. Do you know of any connection, either directly or indirectly, between your resignation as county clerk and the candidacy of John M. C. Smith for Congress?—A. I do not. I would like a chance to explain one thing here with regard to the filing of the resignation, and that is this: When I received the letter from Judge Smith with the resignation and his acceptance upon it, I was sitting at the desk in the clerk's office, and I opened the letter and read the resignation and acceptance, and turned them over and took the filing stamp and stamped the filing and date on and took the pen and started in to write my name. I was not county clerk at that time; I knew that as well as anybody; but I did this involuntarily, just as I had filed hundreds of other papers; and I wrote as the resignation shows, "Ernest G." and started in to write "Pray" and put a capital "P" there, and stopped because it came to me that I was not county clerk and I had no right to sign it as county clerk. I would like to make that explanation. I left it just as it was. I could easily have erased my name there, and Miss Lohr was in the office at the time and I could have easily had her sign it as deputy county clerk. I at that time had no idea that a congressional contest would be on, but I did expect that there might be a protest filed against me as representative.

Q. For what reason?—A. As being an incumbent of the clerk's office.

Q. When you ran for the office?—A. Yes, sir; and the thought passed through my mind that I would leave that just exactly as it was and I would be able to explain it just how that was done. It was left just as it was and Miss Lohr, the deputy clerk, placed the paper in the vault and indexed it on the general index.

Recross-examination by Mr. ADAMS:

Q. You didn't cross your name off; you left it on the paper you just have been describing?—A. No, sir; I left it as it was save that letter "P."

Q. You didn't have Miss Lohr put any filing on it?—A. No, sir; the date is on there.

Q. Now, Mr. Pray, these ballots you handed out for the November 5, 1912, election were all the same size, were they not?—A. Oh, yes; certainly.

C. A. POPE, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Pope, where do you reside?—A. In the fourth ward of the city of Charlotte, county of Eaton, State of Michigan.

Q. What is your age?—A. Thirty-eight.

Q. What is your occupation?—A. I am a groceryman.

Q. What official position do you hold in the city?—A. I am alderman of the fourth ward.

Q. Were you at the general election held in the fourth ward of the city of Charlotte on Tuesday, the 5th day of November, 1912?—A. Yes, sir.

Q. What official position did you hold at that time on the board of election?—A. I was one of the inspectors.

Q. As the alderman of that ward?—A. Yes, sir.

Q. Who was the other alderman?—A. James Greenman.

Q. Do you know Mr. Johnson, of that ward? What his name is, Frank?—A. I don't know his given name.

Q. Frank Johnson?—A. Yes, sir.

Q. Was he present there at that election precinct?—A. Yes, sir.

Q. Did you give any instructions to any voter there that day as to how to mark his ballot?—A. I did; yes, sir.

Q. How many?—A. Two.

Q. Did you know them?—A. I knew one of them; the other man was not so well known to me.

Q. Who were they?—A. One man's name was Ed. Speyer; the other man's name I don't know.

Q. How long have you known Ed. Speyer?—A. Probably seven or eight years.

Q. Was he well acquainted with you?—A. Yes, sir.

Q. Did he ask you for assistance?—A. He did; yes, sir.

Q. What do you know about his physical condition?—A. I know that he was unable to handle his hands.

Q. How long had he been that way?—A. Ever since I have known him; he told me he had always been that way.

Q. Well, was he an educated man?—A. No, sir; he is not.

Q. He can't read nor write?—A. No, sir.

Q. How long have you known of that?—A. Practically all the time I have known him.

Q. Now, witness, this man who asked you to assist him in marking his ballot, do you know what his politics were?—A. Yes, sir.

Q. What were they?—A. He was a Democrat.

Q. Did he ask you or suggest to you that he wanted to split his ticket in any way?—A. No, sir; he did not.

Q. I will ask you whether you tried to induce him to vote for any person?—A. No, sir.

Mr. ADAMS. I move to strike that out as the conclusion of the witness and as incompetent.

Q. Did you, at that election, urge or suggest to anyone to vote for any particular candidate on any ticket?—A. No, sir; I did not.

Q. Do you know of any electioneering being done at the polls that day?—A. No, sir.

Q. Did you hear Mr. Johnson's testimony when he was here before this commissioner?—A. No, sir; I did not.

Q. He said there was a discussion between yourself and him as to whether it would be right for you to call the attention of those who were on the Progressive ticket to the fact that they had no ticket of their own in the county; was there any talk of that kind?—A. That conversation came up the day before election; it was not on the day of election.

Q. Did you do anything of that kind on election day?—A. No, sir.

Q. Do you know anything about a challenge that Mr. Johnson made there of a voter?—A. Yes, sir.

Q. What do you know about that?—A. I know it was a man named Perry that started in through the gate and got partially in, and Mr. Johnson stepped up to him and told him that he would not be able to vote in that ward; that he was not a voter in that ward. At that time Mr. Greenman came back and started out of the gate, and he agreed with Mr. Johnson. I think the man said that he had not been in the ward long enough and did not want to vote, and turned around and went out.

Q. Was there anybody that urged his right to vote?—A. No, sir.

Q. He said he didn't want to vote, that he was satisfied. Did he try to get in and vote afterwards?—A. I didn't see him afterwards.

Q. Was there any talk between the election board and Mr. Johnson and yourself in an insulting way toward him because he had challenged this man?—A. Why, Mr. Greenman made the remark to Mr. Hughey shortly after that, that if they persisted in challenging Democratic votes they would not elect very many of their men.

Q. Would you say that was in earnest?—A. That was as a joke, and Mr. Hughey considered it as such.

Mr. ADAMS. I move to strike out what Mr. Hughey said as incompetent and as the conclusion of the witness.

Q. Was Mr. Hughey the Democratic challenger?—A. One of them.

Q. And Mr. Johnson the other?—A. Yes, sir.

Q. They had two of them, did they?—A. Yes, sir.

Q. Did the Republicans have any challenger there?—A. Not that I remember of.

Q. Did they show you their credentials?—A. Yes, sir.

Q. And they remained throughout the day?—A. Mr. Hughey remained up to the time the polls closed and exchanged with Mr. Sowers.

Q. Then who remained?—A. Mr. Sowers and Mr. Johnson; I think Mr. Johnson remained.

Q. Mr. Sowers remained there during the canvass of the votes?—A. Yes, sir.

Q. What have you to say as to whether Claude S. Carney was given all the votes that were cast for him in that ward at that election?—A. He certainly was.

Q. Were there any more votes given to John M. C. Smith than were honestly cast for him?—A. No, sir.

Q. Did you hear Mr. Greenman say anything about voting for John M. C. Smith, or something of that kind; did you hear anything of that kind?—A. I didn't hear anything of that kind.

Q. You told about one that you knew that was unable to read and write and that he was physically unable to hold a pen to mark a paper; what was his name?—A. Mr. Speyer.

Q. You spoke of one other who had to have assistance; who was that?—A. I can't recollect his name.

Q. What was his difficulty?—A. He told me that he was unable to read and write and went on to explain that he never had an opportunity to go to school.

Q. Who was he?—A. I don't remember the man's name.

Q. Was that the only man that you assisted with the exception of Mr. Speyer?—A. Yes, sir.

Q. That was assisted at the polls that day?—A. That is all I remember.

Q. Did the Democrats challenge anyone but the one man named Perry?—A. That is all.

Q. How long have you been on the election board in the fourth ward of the city of Charlotte?

Mr. ADAMS. Objected to as incompetent and immaterial.

A. About two years; nearly two years.

Q. Were you acquainted with the voters that voted there that day?—A. Yes, sir.

Q. Now, was there anyone challenged aside from Mr. Perry?—A. I don't think there was.

Q. Was there anyone who voted there that day who was not a legal voter in the ward that you know of?

Mr. ADAMS. Objected to as incompetent and immaterial and the conclusion of the witness.

A. Not anyone that I know of.

Q. Was there any disturbance about the polls that day at all?—A. No, sir.

Q. It was a quiet election?—A. Yes, sir; I called it so.

Cross-examination by Mr. ADAMS:

Q. You say you knew all the voters that voted there that day?—A. I didn't say I did.

Q. Did you?—A. No, sir.

Q. You didn't know them all?—A. Not all of them.

Q. You can't recall the name of that other fellow who asked for instructions?—A. No, sir.

Q. Did you give him instructions?—A. Yes, sir.

Q. Where did you give him instructions?—A. In the booth.

Q. Did you administer any oath to him?—A. No, sir.

Q. He was not physically disabled?—A. No, sir.

Q. Did you administer any oath to him at all before you gave him instructions?—A. No, sir.

Q. Did you mark his ballot?—A. No, sir.

Q. You instructed him about marking his ballot, did you?—A. Yes, sir.

Q. In the booth?—A. Yes, sir.

Q. Before doing that and up to the time he deposited his vote in the ballot box, you didn't administer any oath to him at all?—A. No, sir.

Q. There was no other reason why you gave him any instructions, except he told you that he didn't understand the English language?—A. No, sir; he said he couldn't read nor write.

Q. That was the only reason you gave him those instructions?—A. Yes, sir.

Q. He voted there, did he, at that election that day?—A. Yes, sir.

Q. His vote was put in the ballot box?—A. Yes, sir.

Q. Now, this other man—Speyer, I think you said his name was, Mr. Pope—was a man about how old?—A. He was a man about 50 years old, I think.

Q. You saw he was on that day when he came in to vote a cripple?—A. Yes, sir.

Q. Both hands?—A. He has got a kind of paralysis, or something of that sort—palsy; he shakes all over.

Q. Sort of a palsy?—A. Yes, sir.

Q. Both hands shaking?—A. Yes, sir.

Q. And did on that day when he came in there?—A. They did all the time.

Q. Did you ever see him write?—A. No, sir.

Q. You never did?—A. No, sir.

Q. Do you know whether he could or not?—A. No; he doesn't write.

Q. Do you know of your own knowledge whether he can write or not; you never saw him write?—A. I know this much: He is a man that can't take out his pocketbook, and a great many times I have taken it out for him and put it back for him.

Q. You have done that?—A. Yes, sir.

Q. You didn't administer any oath to him?—A. No, sir.

Q. But you marked his ballot for him, did you?—A. Yes, sir.

Q. Did he have at that time good eyesight?—A. Why, I think he has; I think he can see all right.

Q. Did he walk with a cane?—A. No, sir.

Q. Or a crutch or anything?—A. No, sir.

Q. He could walk without any assistance?—A. Yes, sir.

Q. He came to the polls without any assistance?—A. Yes, sir.

Q. And walked around town before that election without assistance, of your own personal knowledge?—A. Yes, sir.

Q. I suppose you don't know; you didn't keep the tally books or either of them?—A. No, sir.

Q. You don't know what tallies the clerks put down, whether they tallied correctly as the votes were called off of your own knowledge, do you?—A. The only thing I would be positive of would be the straight votes, the number that we counted then or the split votes.

Q. You didn't keep track of the split votes, did you, as they were counted off there that day?—A. I kept track of the head of the split votes.

Q. The other split votes you didn't keep track of on any paper?—A. No, sir.

Q. You didn't carry them in your head for all those various candidates, did you?—A. No, sir.

Q. When you got through with the election, whether the clerks had tallied the vote correctly in every instance, you couldn't say as to that, could you, of your own knowledge?—A. I suppose they did; I didn't put them down.

Q. Did you go to your meals that day?—A. I went to dinner.

Q. Did you go to supper?—A. No, sir.

Q. How did you get your supper?—A. Our supper was brought in.

Q. The whole board had supper there?—A. Yes, sir.

Q. What time did you go to dinner?—A. Twelve o'clock.

Q. How long were you gone?—A. Possible half an hour.

Q. Did any of the other inspectors go to dinner at the same time you did?—A. I think not; I think we divided; I am not sure about it; I think one at a time went.

Q. You were an alderman on the 5th day of November, 1912?—A. Yes, sir.

Q. Who was the other alderman there in that ward that day?—A. James Greenman.

Q. I notice a man named Porter acted as inspector there?—A. Yes, sir.

Q. Was he an alderman?—A. No, sir.

Q. Was he nominated there by the voters, not the officers of the election, inspectors, or clerks, for the position of inspector of that election?—A. No voters were there when the polls were opened.

Q. Mr. Porter was there, but he was not an inspector under your city charter?—A. No, sir.

Q. You just swore him in?—A. Yes, sir.

Q. What time did you open the polls?—A. At 7 o'clock.

Q. Eastern time or standard time?—A. Standard time.

Q. Where did you get your election ballots from that you used there that day?—A. I suppose they were brought there by the city clerk; they were there when I arrived.

Q. You don't know who brought them there?—A. No, sir; I do not.

Q. You said you instructed two voters?—A. Yes, sir.

Q. And no more?—A. That is all.

Q. You were a Republican on the 5th day of November?—A. Yes, sir.

Q. And were elected alderman on the Republican ticket?—A. Yes, sir.

Q. Was Mr. Greenman a Republican?—A. Yes, sir.

Q. Was Mr. Greenman a Republican on the 5th day of November, 1912?—A. Yes, sir.

Q. What were the politics of Mr. Porter?—A. He was a Progressive.

Q. Was he a Progressive on the 5th day of November, 1912?—A. Yes, sir.

Q. The Progressives didn't have on their ticket—on the ticket they voted there at that election—any county officers' names?—A. No, sir.

Q. And the Republicans were endeavoring to get all the Bull Moosers you could to vote the Republican county ticket, were you not?—A. I don't know as we were; no. I presume you are speaking of the election board?

Q. Well, I am speaking of the Republicans generally in this locality.—A. I think we were; yes, sir.

Mr. MAYNARD.

Q. Mr. Porter was a candidate on the Progressive ticket for a city office?—A. Yes, sir.

Mr. ADAMS.

Q. Mr. Porter, the man who acted as one of the inspectors there in that ward on November 5, 1912, had been a Republican before, hadn't he?—A. Yes, sir; I think he had.

Q. And before the election of November 5, 1912, he became a Bull Mooser?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Who read the ballots when you counted up?—A. Mr. Greenman read part of them and I read part of them.

Q. When he read them, what did you do?—A. I was looking over his shoulder.

Q. Do you know whether he read them correctly or not?—A. Yes, sir.

Q. When you read them, did you read them correctly?—A. Yes, sir.

J. B. DOWDIGAN, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Third ward, Charlotte.

Q. What is your age?—A. I am 43.

Q. How long have you lived in the city?—A. Nearly 10 years.

Q. Do you hold any official position in the city?—A. I am alderman in the third ward.

Q. How long have you held that position?—A. It will be 2 years in April.

Q. Were you present at the general election held on Tuesday, November 5, 1912, in the third ward of the city of Charlotte, Eaton County, Mich.?—A. Yes, sir; I was.

Q. What official capacity did you hold?—A. I was one of the inspectors.

Q. Inspectors of the election?—A. Yes, sir.

Q. Witness, did you hear the testimony of Mr. Mosler?—A. No, sir; I did not.

Q. He testified when voters wanted to be assisted you would open the door on one side and go in, and Mr. Johnson on the other, and that there was no chance for him to get in with four of you crowding the booth; now, was there anything of that kind took place that day that you saw?—A. No, sir.

Q. Of crowding in the booths with voters?—A. No, sir.

Q. Who was there to assist voters if they had to have assistance?—A. Why, I was on the inside, where the voters came in, and handed the ballots out to them, and they would turn to me for assistance.

Q. You mean to go in the booths and mark the ballots with them who asked instructions?—A. Yes, sir.

Q. Did you go in the booths and mark any ballots for any voter that day?—A. I didn't mark any ballots; I went in the booths, I think, twice.

Q. Not more than that?—A. I will not be positive; I am sure of twice, and it might have been three times.

Q. Not to exceed that much; not to exceed three times? Now, did you hear the testimony of Mr. Dunning?—A. I heard part of it.

Q. Do you have any recollection of that occurrence?—A. In regard to Mr. Mosler?

Q. Yes, sir; did you hear that? Do you know what took place there?—A. Yes, sir.

Q. State what that was.—A. Why, there was quite an old gentleman in the booth, and he said he could not see to mark his ballot, and he wanted some assistance, so I stepped in the booth from my side and called Mr. Mosler from the other side; he was pretty well over toward the side of the booth that Mr. Mosler came in from. So Mr. Mosler stood there holding the door partly open with his hand. And this man says—I asked him who he wanted to vote for, and he says: "I want to vote the Democratic ticket and some of the Republican ticket." I showed him the head of the Democratic ticket, and Mr. Mosler was

looking on and Mr. Johnson was looking over Mr. Mosler's shoulder. Mr. Johnson was outside of the booth. I made a mark in the circle at the head of the ticket, and I says, "Who else do you want to vote for?" and he says, "Mr. Storrs." That was on the county ticket, and I showed him where Mr. Storrs's name was, and he made the same marks there. I says, "Are there any others?" He says, "Now, wait a minute." I says, "How about J. M. C. Smith?" He says, "Yes; I want to vote for J. M. C. Smith," or words to that effect. That was all that was said.

Q. Did you hear any talk during the day, any such remarks as stated by Mr. Johnson on that occasion?—A. No, sir.

Q. Did you hear anyone about the polling place electioneering for any candidate?—A. No, sir.

Q. Did you hear any of those who were inside of the voting place urging or suggesting to any voter that he support or vote for any particular candidate at that election?—A. No, sir; nothing of that sort.

Q. Was it a quiet election; no trouble about the polls?—A. No trouble at all; everything went off smoothly and quietly.

Q. Did you remain there until the polls were closed?—A. I did.

Q. Did you assist in the count?—A. Yes, sir.

Q. What part did you take in the count?—A. I read the ballots.

Q. Did you read them all until completed?—A. Yes, sir.

Q. Did you read them correctly?—A. Yes, sir; I believe I did; there was a challenger looking over my shoulder every minute.

Q. Was Mr. Barney there? What was he doing?—A. He was one of the inspectors.

Q. What was he doing while you were reading the ballots?—A. Why, when we started to read the ballots he and Mr. Johnson counted up the suffrage ballots; then, too, I think he looked on while we were reading and remained until the votes were counted.

Q. Who were the clerks of the election?—A. Claude Fisher and Ray Munger.

Q. Who was Claude Fisher?—A. He was teller in the Eaton County Savings Bank.

Q. Mr. Munger, what was his business?—A. He was in the hardware business here.

Q. Was it Ray Munger?—A. M-u-n-g-e-r.

Cross-examination by Mr. ADAMS:

Q. You stated that Mr. Gardiner was there that day?—A. Yes, sir.

Q. Mr. Gardiner was a John M. C. Smith man that day?—A. He was a pretty rabid Democrat; I don't know who he was for.

Q. I didn't ask you whether he was a Democrat. He was a John M. C. Smith man that day?—A. No, sir; not that I know of.

Q. He has been a John M. C. Smith man, hasn't he, at the November 5, 1912, election; hasn't he, to your knowledge?—A. No, sir.

Q. You don't know one way or the other about it?—A. I know he feels friendly toward John M. C. Smith, but how he voted I couldn't say.

Q. You read the ballots you say when the count closed?—A. Yes, sir.

Q. All the time?—A. Yes, sir.

Q. As long as there were any to read?—A. Yes, sir.

Q. I mean now the ballots on which the candidates for the various offices appear; you read all those?—A. Yes, sir.

Q. What do you call electioneering?—A. Well, I should say soliciting; asking a man to vote for a certain man.

Q. Nothing else that you would incorporate in your definition of electioneering?—A. No, sir; I think not.

Q. This man that you say you went into the booth with with Mr. Johnson and suggested that he vote for John M. C. Smith, what was that voter's name?—A. I think it was Tracy.

Q. Did he vote for John M. C. Smith?—A. Yes, sir.

Q. He marked the ballot himself?—A. Yes, sir.

Q. Himself entirely?—A. Yes, sir.

Q. And you stood there and saw him mark it?—A. Yes, sir.

Q. He was in the booth when he marked it?—A. Yes, sir.

Q. Mr. Tracy was?—A. Yes, sir.

Q. Where were you?—A. I was in the booth on one side and Mr. Mosier on the other side.

Q. You three fellows were in the booth?—A. Yes, sir.

Q. The booths are about 3 feet wide?—A. About that.

Q. Mr. Mosler was partly in the booth?—A. He was not in entirely; he was standing in the door and holding the door partly open.

Q. Let's see; Mr. Tracy, he was in the booth?—A. Yes, sir.

Q. You were in the booth?—A. Yes, sir.

Q. Who was the other officer that was in the booth?—A. No other officer was in the booth.

Q. Who else was in the booth; anyone else but Mr. Mosler?—A. He was partly in the booth.

Q. Who was looking over Mr. Mosler's shoulder?—A. Mr. Dunning on the other side looking over Mr. Mosler's shoulder.

Q. This booth was about 3 feet wide?—A. About 3 feet, possibly a little wider.

Q. Was it any wider than 3 feet?—A. I couldn't say.

Q. You can't recollect about that?—A. I never measured it.

Q. You have some idea of distances, haven't you?—A. I should say about 3 feet.

Q. Did you go to your meals that day while on the election board—during the day you were on the election board?—A. Yes, sir; I went out to dinner.

Q. How long were you gone to dinner?—A. Oh, about half an hour.

Q. Did anybody go to dinner with you—any of the election board or inspectors?—A. I can hardly remember whether any of them went to dinner at the same time; one of the clerks went at the time I did.

Q. Did one of the inspectors go at the time you did?—A. I don't think so.

Q. When you got back were both the other inspectors there?—A. I think they were; yes, sir.

Q. Did they go to dinner?—A. Yes, sir.

Q. Both at the same time?—A. I don't think so.

Q. You handed out the ballots that day up to the time the polls closed, all the time?—A. Yes, sir.

Q. You were on which side of the booths in doing that?—A. On the east side.

Q. The other inspectors were not on the east side of the booths?—A. No, sir; only as they came around there; they were part of the time.

Q. They were in marking and receiving ballots wholly on the other side of the booths; the booths were between you?—A. Yes, sir.

Q. You had how many booths there, four?—A. As many as that; it seems to me there were five.

Q. They occupied in length of space how much; how many feet?—A. Oh, 15 or 16 feet.

Q. This man Tracy, no oath was administered to him as to his ability to read or write the English language before you told him how to mark his ballot; he was not sworn?—A. No, sir; I didn't think it was necessary.

Mr. ADAMS. I move to strike that out as not responsive to the question.

Q. I ask you for the fact whether any oath was administered there to Mr. Tracy at any time before and including the time when you gave him instructions there that day, in that voting place?—A. No, sir.

Q. You stated that you went in the booth twice; who was the other man that you went in with?—A. I think it was Mr. Cooper.

Q. Did you instruct him?—A. I assisted him.

Q. How did you assist him?—A. I showed him where to mark his ballot, and it is possible I marked his ballot; he was a very old man and very feeble; he must have been upward of 85, I should say.

Q. Do you know whether he could read at that time?—A. Well, I don't know.

Q. Did he speak English?—A. Yes, sir.

Q. Plainly or brokenly?—A. Plainly.

Q. Did he claim to you there that he could not mark his ballot?—A. He said he could not see; he could not see to mark it.

Q. You could tell from looking at him whether he could see to mark his ballot or not, couldn't you?—A. I would judge he could not; he was a feeble old man.

Q. What was there about his eyesight that indicated to you that he could not see to mark his ballot?—A. His general appearance was that he was a very weak man; his eyes looked weak.

Q. They looked weak?—A. He said he could not see, and I believed he could not see.

Q. Did he wear any glasses?—A. No, sir.

Q. He didn't have any glasses on; spectacles or glasses of any kind?—A. No, sir.

Q. Was Mr. Johnson there when the polls opened?—A. No, sir.

Q. You were a Republican on that day?—A. Well, I voted part of three tickets that day.

Q. Your politics were Republican at that time; you were elected as a Republican alderman?—A. Yes, sir.

Q. Are you still an alderman?—A. Yes, sir.

Q. You consider yourself a Republican in politics?—A. Yes, sir.

Q. And you did on November 5, 1912?—A. Yes, sir.

Q. The returns that you made up there that night you sent the same in an envelope addressed to the board of county canvassers in care of the judge of probate or register of probate, did you?—A. Yes, sir.

Q. You put the same returns in an envelope addressed to the county clerk?—A. Yes, sir.

Q. Did you see those returns put in an envelope?—A. Yes, sir.

Q. You had two tally books there—two poll books and two statement books?—A. Yes, sir.

Q. Which had been furnished by the county clerk of Eaton County, and you put all those returns in those two poll books—two tally-sheet books and two statement books in those two envelopes, didn't you?—A. I think the clerks put them in the envelopes; I directed them to read the instructions on the envelope and to put the proper books in the envelope.

Q. You were chairman of that board?—A. I was chairman.

Q. Were you elected chairman there on that day, on the 5th day of November, 1912, after that board were sworn in as inspectors?—A. The charter makes me chairman.

Q. Now, will you tell us—answer my question—were you elected by the inspectors of the election board there on the 5th day of November, 1912, the day you were sworn in, to act as chairman of that board of election?—A. No, sir; it was not necessary.

Mr. ADAMS. I move to strike out the answer as not responsive to the question and the conclusion of the witness.

Q. Now, as a matter of fact, your board there that night of November 5, 1912, put the poll book and the statement book and the tally-sheet book which had been furnished your board by the county clerk in one envelope that was addressed to the board of county canvassers in care of the judge of probate or register in chancery, didn't you?—A. I was thinking there were two books; maybe the other one was put in.

Q. You put the statement book and the tally-sheet book and the poll book in another envelope that was addressed to the county clerk?—A. Yes, sir.

Q. So you put all the official tally-sheet books, statement books, and poll books that had been furnished your election board in those two envelopes before you adjourned?—A. Well, if they are in there we put them in; yes, sir. I thought, however, that one tally-sheet book was put in the ballot box.

Q. I have before you the envelopes that have been produced by the present county clerk of your county of Eaton, and one of these envelopes is addressed to the board of county canvassers in care of the judge of probate or register in chancery, and the other addressed to the county clerk of Eaton County, Mich. Is it not a fact that there are now in these two envelopes one statement book, one poll book, and one tally-sheet book that you gentlemen had there for use by your board on November 5, 1912? Please look them over before you answer the question.—A. I can't swear whether there was any other book left in the ballot box or not.

(Last question read.)

A. They are all here.

Q. Those are the books that the board had there that day, are they not? You recognize them, don't you, your writing, your signature wherever it appears here?

Mr. FRANKHAUSER. It is admitted that they were returned here from that ward.

Q. Those were the only books that were delivered to your board—one poll book, one statement book, and one tally-sheet book—that were delivered to your board officially for that election of November 5, 1912—that you have before you?—A. I believe that is so.

Q. So you did not have any other official poll book or tally sheet book or statement book to put in the ballot box, did you?—A. No, sir; I guess not; I would not say we had, anyway.

By Mr. FRANKHAUSER:

Q. There were two Democratic challengers there that day; was anybody challenged?—A. No, sir.

(Whereupon the hearing was adjourned until 9 o'clock a. m. Thursday, March 27, A. D. 1913.)

THURSDAY, MARCH 27, 1913—9 O'CLOCK A. M.

CLAUDE E. FISHER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Charlotte.

Q. Eaton County, Mich.?—A. Yes, sir.

Q. Which ward?—A. The third ward.

Q. What is your age?—A. I am 31.

Q. What is your occupation?—A. I am teller in a bank.

Q. Are you a married man?—A. Yes, sir.

Q. How long have you lived in Charlotte?—A. Nine years.

Q. How long have you been engaged in banking?—A. About six years.

Q. Were you present at the general election held in the third ward of the city of Charlotte, Eaton County, Mich., on the 5th day of November, 1912?—A. If that was the day of the general election, I was; yes, sir.

Q. Did you have any official position with the election board in that precinct on that day?—A. I was clerk of the board.

Q. Who was the other clerk?—A. Roy Munger.

Q. Did you have charge as clerk of election any other election than that?

Mr. ADAMS. I object to that as incompetent and immaterial.

A. Yes, sir.

Q. More than once?—A. In this ward?

Q. Anywhere?—A. I served in the fourth ward.

Q. Were you there when the election closed?—A. Yes, sir.

Q. Who read the ballots?—A. Why, Mr. Dowdigan and Mr. Dunning.

Q. Did they read them out aloud?—A. I think both of them did, if I remember right.

Q. You think they changed off?—A. Yes, sir; I think Mr. Dowdigan—I think Mr. Dowdigan read most of them and I don't know but he read them all; I couldn't tell you.

Q. Did you keep tally while they were reading?—A. Yes, sir.

Q. I will ask you whether you kept a correct tally?—A. Well, I suppose I did.

Q. When did you get to the polls that day?—A. I got there a quarter to 7 o'clock in the morning.

Q. How long did you remain at the polls?—A. Until noon.

Q. Where did you go then?—A. I went down to a restaurant for dinner.

Q. On the opposite side of the street?—A. Yes; in the post-office block.

Q. How far from the voting place?—A. One block.

Q. On the same street?—A. No, sir; it is Main Street only on the opposite side.

Q. The restaurant was at the corner of what streets?—A. Main and Seminary.

Q. Which street does it face on?—A. East, on Main Street.

Q. The restaurant you were in, on which side of Main Street was that on?—A. The east side.

Q. It was not a block from the polling place?—A. No, sir; it was on the opposite side of the street.

Q. How long were you gone to dinner?—A. I think about 20 minutes.

Q. Whom did you leave in charge during the time?—A. Mr. Munger.

Q. Which went first, you or Mr. Munger?—A. Well, sir; I can't remember.

Q. Did you both leave at the same time?—A. No, sir.

Q. When you returned, how long did you remain?—A. I remained until after the polls closed at night and, I should judge, about an hour after that.

Q. What did you then do?—A. I went down to Prout's restaurant for supper.

Q. During the day of this election did you know of, or hear, any electioneering in and around the voting place for any particular candidate?—A. Why, once during the day—I can't remember whether in the forenoon or afternoon—an old

gentleman came in, I don't remember his name, and I don't remember whether he was blind or whether he couldn't read, but he was a very old gentleman, and he asked for instructions and he said, as I remember, that he wanted to vote for Mr. Wilson and Ferris, and Mr. Dunning was standing on the outside of the booth or door and he says, "How about J. M. C.?" I think those were his words. That is the only thing I heard during the day that had anything to do in regard to electioneering.

Cross-examination by Mr. ADAMS:

Q. Did you all go down to supper at the same time?—A. No, sir.

Q. Who went when you did?—A. I think Mr. Munger and Dr. Dowdigan.

Q. What were the others doing when you left?—A. They were sorting the ballots.

Q. They had opened the ballot box before you went to supper after the polls closed?—A. Yes, sir.

Q. They closed at what hour?—A. Five o'clock.

Q. You went about 6 o'clock to supper?—A. I think a little later than 6 o'clock.

Q. From 5 o'clock until a little after 6 o'clock they didn't have the ballots all sorted?—A. No, sir.

Q. You opened the ballot box right after 5 o'clock immediately when the polls closed?—A. Yes, sir.

Q. Then you were sorting ballots from 5 o'clock up to the time you went to supper?—A. Yes, sir.

Q. Which you say was a little after 6 o'clock?—A. As I remember; I couldn't say positively, that is my remembrance of it.

Q. When you went to supper, you and the other gentlemen, they were not through sorting?—A. No, sir.

Q. Were they through sorting when you got back?—A. I don't believe they were.

Q. Hadn't they commenced counting when you got back?—A. No, sir.

Q. But they had the ballots open; the ballot box had been opened containing the ballots for the candidates for Representative in Congress and all the other ballots that related to any candidate for office?—A. Yes, sir.

Q. They had done this at 5 o'clock?—A. Yes, sir.

Q. Or very shortly after; how soon after would you say?—A. As quick as we could get our booths down.

Q. Probably 15 or 20 minutes?—A. Yes, sir.

Q. The ballots were spread out on the table when you went to supper, and they were counting them?—A. Not counting them; no, sir.

Q. They were sorting them?—A. Yes, sir.

Q. When you got back from supper, they were still sorting?—A. Yes, sir.

Q. What do you mean by electioneering?—A. Why, I understand that electioneering is where—I don't know as I know whether that was electioneering or not—as I understand the meaning of electioneering, it is to ask a man for a vote or something in that line.

Q. You consider it electioneering if he asked him to vote for some particular person, in the interest of some particular person?—A. Well, I don't know whether that is electioneering or not.

Q. You wouldn't know?—A. No, sir.

Q. Who did you say went to supper when you did?—A. Mr. Dowdigan and Roy Munger.

Q. Dr. Dowdigan is a dentist in Charlotte?—A. Yes, sir.

Q. Who did you leave there when you and Dr. Dowdigan and Roy Munger went to supper?—A. The other inspectors.

Q. Who?—A. Mr. Dunning and Mr. Barney.

Redirect examination by Mr. MAYNARD:

Q. Did you hear anybody there during that day in the election booth or in the polling place talking in the interest of any particular candidate for any office?—A. No, sir; I did not.

Recross-examination by Mr. ADAMS:

Q. The man who passed out the ballots that day to the voters when they came in there to get their ballots was on the opposite side of the booths from you?—A. No, sir; on the same side.

Q. Who passed out the ballots?—A. Dr. Dowdigan most of the day.

Q. He was on the same side of the booths you were on?—A. Yes, sir.

Q. Then, I take it, that all the inspectors and clerks of that board that day were on one and the same side of the booths in the work they did there that day?—A. No, sir.

Q. What do you mean by that?—A. The inspector was the man who took care of the ballot box.

Q. They were all on the same side of the booths, you say?—A. No, sir; on the opposite side.

Q. Then, all the inspectors except the man who received the ballots from the voters and put them in the ballot box were on one and the same side of the booths?—A. No, sir; not all day.

Q. Practically all day?—A. No, sir.

Q. Let us see. On that side of the booths where the ballots were passed out to the voter, who was on that side, of the board?—A. Why, Dr. Dowdigan and the two clerks.

Q. Who was on the other side of the booths?—A. Mr. Dunning and George Barney most all day.

Q. What were they doing on the other side?—A. They were attending the ballot box.

Q. Two of them didn't?—A. No, sir; one attended the ballot box, but I think Mr. Dunning relieved Dr. Dowdigan once or twice.

Q. I understood you to say where you were you could not see what was being done by the inspectors on the other side of the booth?—A. Why, I sat where I could probably see them if I had watched them.

Did you have your back to them?—A. Yes, sir.

Q. Where was the ballot box located with respect to the line or the long way of the booths; about the middle of them?—A. Here [indicating] are the booths and there was the desk, and I sat here and the ballot box was here; so I could look through to the ballot box.

Q. You didn't have to look through the booths to see the ballot box?—A. No, sir; the ballot box was near the wall and I sat against the wall, and there was a little space to walk through.

Redirect examination by Mr. MAYNARD:

Q. Which way did that room run, east and west or north and south?—A. The long way, or north and south.

Q. Which way does the street run?—A. Main Street?

Q. Yes.—A. Main Street runs north and south.

Q. Are there any windows in that room where the voting took place?—A. Yes, sir.

Q. Which way did the windows face?—A. There is a big window in the front facing east and a big window in the north facing the north, and a little farther another window.

Q. Farther west?—A. Yes, sir; another window farther west.

Q. In the north end of the room there are two windows?—A. Yes, sir.

Q. And one large one in the north?—A. I think two windows; I will not be sure. I think there was a small window or the bottom of a window on the west side, but I am not positive about that; there is a window in the northeast corner.

Q. The booths, which way did they run?—A. North and south.

Q. Which corner of this room of the voting precinct was the gate that the voters came in?—A. At the farther end south.

Q. The southeast corner?—A. The southeast corner; yes, sir.

Q. On which side of the room were the clerks?—A. They were on the north side of the room, clear to the farther end.

Q. At the northeast corner?—A. At the northeast corner; yes, sir.

Q. On which side of the room was Dr. Dowdigan?—A. On the same side the clerks were.

Q. On the east side?—A. Yes, sir; or north—whatever you call it. That faces to the east, his desk did; he sat over here. [Indicating.]

Q. Where was the gate?—A. Over at that end. [Indicating.]

Q. He didn't sit near the gate?—A. There was a long desk and he sat at the farther end of the desk.

Q. That would be on the east side of the room?—A. Yes, sir.

Q. And the booths run north and south?—A. Yes, sir.

Q. Which side of those booths did Mr. Mosier, the challenger, sit?—A. On the west side.

Q. The other side of the booths from you?—A. Yes, sir.

Q. The ballot box was in which corner of the voting place?—A. Over in the northwest corner.

Q. What did the ballot box sit on?—A. I think on the floor or a large box.

ROY MUNGER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Munger, where do you reside?—A. In Charlotte.

Q. What is your business?—A. I am a hardware dealer.

Q. What is the name of your firm?—A. J. W. Munger & Son.

Q. What is your age?—A. I am 34.

Q. Are you a married man?—A. Yes, sir.

Q. How long have you lived in Charlotte?—A. About 22 years.

Q. Were you at the general election held on Tuesday, the 5th day of November, 1912, in the third ward of the city of Charlotte?—A. Yes, sir.

Q. Did you officiate in any capacity in connection with the election board; if so, what?—A. I was clerk.

Q. Did you act as clerk of election at more than this election?—A. Yes, sir.

Mr. ADAMS. I move to strike out the answer as irrelevant and immaterial.

Q. How long have you lived in the third ward of the city of Charlotte?—

A. Why, probably 18 years.

Q. Mr. Munger, what time did you go there that day?—A. About 7 o'clock.

Q. Were you there when the polls opened?—A. Yes, sir.

Q. Were there any constitutional oaths administered to any of the officers when you first opened the polls?—A. Why, the usual swearing in of the board.

Q. Who did that, do you remember?—A. I don't remember now.

Q. You took the oath of office with the rest, did you?—A. Yes, sir.

Q. Did you remain in the discharge of your duties as clerk of the election throughout the day?—A. Why, I went to dinner and supper.

Q. With the exception of that, did you remain in the discharge of your duties until the vote was counted up?—A. Yes, sir.

Q. Did you go to supper?—A. Yes, sir.

Q. Where did you go?—A. To a restaurant.

Q. Who did you go with?—A. Why, with Mr. Fisher and Mr. Dowdigan.

Q. Did you go to dinner?—A. Yes, sir.

Q. Who did you go with?—A. Mr. Collins and Mr. Dunning.

Q. Who was Mr. Collins?—A. James Collins, one of the gatekeepers.

Q. Witness, who read off the ballots when you had been counting?—A. Why, to the best of my recollection, Dr. Dowdigan read the most of them.

Q. Who kept the tallies?—A. Mr. Fisher and I.

Q. Did you hear Claude S. Carney's name read there as one of those receiving votes for the office of Congressman?—A. Yes, sir.

Q. What do you say as to whether or not he received credit for all the votes that was read for his name?—A. To the best of my knowledge.

Q. Did you hear any called for John M. C. Smith's name?—A. Yes, sir.

Q. Did you give him any more votes than was read to you?—A. I did not; no, sir.

Q. Now, during the day, I would like to ask you whether there was any disturbance around the polls; any trouble?—A. Why, no; there were one or two men who were not registered, and they had a little argument; that is the only thing.

Q. They were not registered; were they challenged?—A. They were not registered, so Mr. Dowdigan would not give them a ballot.

Q. There was no trouble or row about it?—A. Why, no; just the matter of talking that would naturally come from the matter.

Q. That was all you heard during the day?—A. That was in the way of any disturbance or anything.

Q. Now, do you know who the Democratic challengers were there that acted in that capacity during the day?—A. Why, I think it was George Gardiner; I would not be positive. I don't know who the other challenger was.

Q. Did you see Mr. Mosier there at all?—A. Yes, sir.

Q. You know him, do you?—A. Yes, sir.

Q. Now, Mr. Mosier, if I remember correctly, said something about like this: That during the day Evander Dunning electioneered for John M. C. Smith, candidate for Congress, and that he became irritated at it and called him down, and that it made quite a scene in that voting place. Now, did you hear anything of that description there during that election day at the polls?—A. The

only thing I remember was the time an old man went in there and asked for instructions, and Mr. Dunning said something like this: "How about John M. C. Smith," or "J. M. C. Smith." That is the only thing I saw or heard that Mr. Dunning said during the day that would be taken for electioneering for anyone.

Q. Did you hear Evander Dunning at any time urge anyone to vote for John M. C. Smith, or mention his name aside from what you have just mentioned?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. How long were you gone to dinner at noon election day?—A. Why, I presume 15 or 20 minutes.

Q. Did you go home to dinner?—A. No, sir; I went down to a restaurant.

Q. Who went with you at noon to dinner of the election board?—A. Inspector Dunning and I went together and James Collins.

Q. Who was Collins?—A. He was a gatekeeper.

Q. Which gatekeeper was he, the incoming or outgoing gatekeeper?—A. I couldn't say.

Q. Did you all go to dinner at the same place?—A. Yes, sir.

Q. When you went to dinner what inspector or inspectors did you leave at the voting place?—A. Mr. Dowdigan and Mr. Barney were the inspectors there.

Q. You went to supper that night?—A. Yes, sir.

Q. What time did you go?—A. Why, to the best of my recollection about a quarter after 6 o'clock.

Q. Who went with you of the clerks or inspectors of that ward?—A. Mr. Fisher, the clerk, and Mr. Dowdigan, an inspector.

Q. Where did you go to supper?—A. To a restaurant.

Q. How long were you at supper; how long did you remain away from the polling place for supper?—A. I think not more than 20 minutes.

Q. Whom did you leave in charge of the ballot box, books, etc., when you went to supper?—A. The other inspectors.

Q. Who?—A. Mr. Barney and Mr. Dunning.

Q. When you got back from supper to the voting place, who was there of the election board?—A. I think when we got there the whole board was there; I think they were all there except us when we were not there.

Q. You are a Republican?—A. Well, I was a Republican.

Q. You were enrolled as a Republican up to the November 5, 1912, election?—A. I have not changed my enrollment in the party enrolled.

Q. The question is whether you were enrolled as a Republican on the 5th day of November, 1912, and including the completion of the election in that precinct?—A. I presume I was.

Q. You have been a Republican for a number of years?—A. Yes, sir.

Q. How long had you been a Republican up to and including the 5th day of November, 1912?—A. I presume ever since I voted.

Q. I understood you to say that you were 34 years old?—A. Yes, sir.

Q. Mr. Fisher was also a Republican, as you understood it, November 5, 1912?—A. I couldn't tell you what his politics were.

Q. Do you know what they were at that time?—A. I am not positive whether he was—

Q. (Interrupting.) You understood he was a Republican, didn't you; that was your understanding of it?—A. I don't think I had any understanding about it at all.

Q. I have here the election returns sent from the third ward of the city of Charlotte and later addressed to the board of county canvassers, and from these two envelopes I have just removed them here before you, two poll books of the general election held Tuesday, the 5th day of November, 1912, in the third ward of the city of Charlotte, in Eaton County, Mich., I wish you would examine them and tell me whether the writing that is in there under the list of voters in either of those books is your handwriting?—A. This one is mine.

Q. The other, do you know whose handwriting that is?—A. I should call it Mr. Fisher's.

Q. The gentleman who preceded you on the witness stand. These are the two poll books that you kept there on November 5, 1912, in conducting that election, are they not?—A. Yes, sir.

Q. That is, you and Mr. Fisher?—A. Yes, sir.

Q. Those are the only poll books you kept there that day, are they not?—A. Yes, sir.

Q. You only had two poll books there that you used; that is, the one you were keeping, I mean, and made on the 5th day of November, 1912, at that election in that ward?—A. Yes, sir.

Q. And you also had two tally-sheet books and two statement books that you made up there that day during the election work your board did, didn't you?—A. Yes, sir.

Q. And you only had two tally-sheet books and two statement books that you did make up there that day?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Examine these books and show me the set you made.—A. These three.

Q. Look the poll book through; that is the poll book you made at that election?—A. Yes, sir.

Q. Is that a correct record of the number of voters voting and the names of the voters at that election?—A. Yes, sir; to the best of my knowledge.

Q. Do you know whether you made it correctly or not, or intended to?—A. I did.

Q. Now, the tally sheet you made, will you show me that?—A. That is the one.

Q. Did you make this tally sheet correctly, according to the best of your knowledge and ability?—A. Yes, sir.

Q. Did you try to keep it a correct statement?—A. Yes, sir.

Q. That is the one you made, is it?—A. Yes, sir.

Q. Here is the statement book?—A. Yes, sir.

Q. Is this the one you made?—A. Yes, sir.

Q. Did you write out all those numbers opposite the name of John M. C. Smith?—A. Yes, sir.

Q. Candidate for Congress?—A. Yes, sir.

Q. And opposite the name of Claude S. Carney?—A. Yes, sir.

Q. Did you make those figures opposite their names?—A. Yes, sir.

Q. This is the book you made there at the polls?—A. Yes, sir.

Q. Can you pick out the set that Mr. Fisher made? Is this the statement book Exhibit 37, made by Mr. Fisher?—A. To the best of my knowledge it is.

Q. At that election?—A. Yes, sir.

Q. Made that night?—A. Yes, sir.

Q. Were these books completed and signed up?—A. At what time?

Q. Before you adjourned.—A. Yes, sir.

Q. At that meeting?—A. Yes, sir.

Q. Is this other tally sheet that has been shown you by the attorney for the contestant a tally-sheet book that was made by Mr. Fisher?—A. It is to the best of my knowledge.

Q. Have you looked through that book where you come to Representative in Congress, to see whether there has been any changes or alterations made in that book in any way?—A. I don't see any changes.

Q. If there had been any alterations or interlineations you could see them, could you not?—A. Yes, sir.

Q. Now take the tally book made by yourself, opposite the names of John M. C. Smith, Representative for Congress, and Claude S. Carney, are those tallies there as you left them and as you made them?—A. Yes, sir.

Q. And the figures here?—A. Yes, sir.

Q. Mr. Fisher's poll book—look at that; is that the one that was made by him at that election?—A. To the best of my knowledge.

Q. Did it agree in the number of votes?—A. Yes, sir.

Q. Did you compare them?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. When you got through you compared that poll book, you and Mr. Fisher, and they corresponded exactly?—A. To the best of my recollection; yes, sir.

Q. I see the certificate made here says that "The foregoing poll lists have been carefully compared with the duplicate poll list as required by law, and that all mistakes found in said poll lists have been duly corrected by us, and that said poll lists are now correct and agree with each other." I see that was signed by Evander Dunning, Dr. Dowdigan, and George J. Barney; isn't that so, and that poll book was the one made by Mr. Fisher? I suppose you compared them and found them to be correct; the two poll books agreed?—A. They agreed to the best of my knowledge.

- Q. You did compare your poll books, didn't you and Mr. Fisher?—A. Yes, sir.
- Q. As far as you and Mr. Fisher were concerned, you compared your poll books?—A. Yes, sir.
- Q. Were those books correct?—A. Yes, sir.
- Q. You found they agreed?—A. To the best of my recollection, they agreed.
- Q. You went over them for that purpose, to see if they agreed, didn't you?—A. Why, we kept track of them to see if they agreed throughout the day.
- Q. When you got through at night with your work, your poll book and Mr. Fisher's poll book you found to agree?—A. That is my recollection; yes, sir.
- Q. I notice in Mr. Fisher's poll book, the one kept by him that day there, that there is no check mark at all to show that the ballots were deposited in the ballot box, is there?—A. No, sir.
- Q. That is Earl French's vote as appears by Mr. Fisher's poll book, 375, as also appears by your poll book you kept there that day?—A. Yes, sir.
- Q. Opposite Earl French's name in the poll book kept by Mr. Fisher, there is no check mark at all?—A. No, sir.
- Q. In your poll book there are two check marks?—A. Yes, sir.
- Q. You had two ballot boxes there that day, didn't you, or did you put all the ballots in one box? I will withdraw that. You had two kind of ballots that day, didn't you, at that election?—A. Yes, sir.
- Q. One was a ballot on which was printed all the various candidates for the various offices to be voted for in the county of Eaton at that election?—A. Yes, sir.
- Q. That was one ballot?—A. Yes, sir.
- Q. There was another ballot upon which were the woman suffrage question and the other amendments to the constitution of the State of Michigan?—A. Yes, sir.
- Q. Those were the two ballots that were there to be voted there that day at that election?—A. Yes, sir.
- Q. So you had one ballot box to put those two different ballots in of the various voters who voted, or did you have two ballot boxes?—A. My recollection is there were two ballot boxes; one for the amendments and one for the candidates.
- Q. Now, then, if a man voted for the candidates for office or voted the ticket that had the various candidates for the various offices, when his ballot was deposited by the man who received the ballots you checked opposite the voter's name, made a check mark, a stroke to show that he had voted?—A. The ticket he voted.
- Q. If he voted both tickets you put two strokes opposite his name?—A. Yes, sir.
- Q. If he voted only one ticket you put one stroke opposite his name to indicate that he only voted one of the two ballots; is that correct?—A. The first column was for the main ticket, and the second column was the amendments.
- Q. Well, now, if he voted what you call the main ticket and didn't vote the other, you put a stroke opposite his name to indicate that he voted the main ticket?—A. Yes, sir.
- Q. If he did not vote the main ticket but did vote for the amendments you put a stroke opposite his name to indicate he voted for the amendments?—A. Yes, sir; in the second column.
- Q. If the voter voted both the main ticket and the amendments then you put two strokes opposite his name?—A. Yes, sir.
- Q. That three hundred and seventy-fifth ballot there in Mr. Fisher's poll book; there are no strokes opposite Mr. French's name at all. That is, Mr. French was the three hundred and seventy-fifth man to vote?—A. Yes, sir.
- Q. That is true; there are no strokes opposite his name in Mr. Fisher's poll book?—A. Yes, sir.
- Q. And you have two strokes opposite Mr. French's name, the three hundred and seventy-fifth voter, in your poll book?—A. Yes, sir.
- Q. Your poll books didn't quite agree when you got through that night?—A. Not exactly in that way; no, sir.

Redirect examination by Mr. MAYNARD:

- Q. Who was the last man that voted there?—A. Earl French.
- Q. Do you remember about what time that vote was cast?—A. No, sir; I do not.
- Q. Do you know whether Mr. Fisher was in when that vote was cast?—A. Yes, sir.

Q. He was?—A. Yes, sir.

Q. Do you think that record is right, that he voted both tickets?—A. Yes, sir.

JOHN W. SAWYER, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Sawyer, where do you reside?—A. In the third ward, Charlotte.

Q. Eaton County, Mich.?—A. Yes, sir.

Q. How long have you lived in Charlotte?—A. Twenty-six years.

Q. How long have you lived in the third ward?—A. Twenty-six years.

Q. Were you present at the election held in the third ward of the city of Charlotte, Eaton County, Mich., on the 5th day of November, A. D. 1912?—A. Yes, sir.

Q. What time did you go there?—A. About 8 o'clock in the morning.

Q. How long did you remain?—A. Until about half past 12; along there.

Q. Then what; did you leave the polls?—A. I went to dinner; yes, sir.

Q. How long were you gone?—A. Oh, half or three-quarters of an hour.

Q. Did you return then?—A. Yes, sir.

Q. How long did you remain?—A. Until 5 o'clock.

Q. Until the polls closed?—A. Yes, sir.

Q. In what capacity were you at the polls?—A. As challenger for the Republican Party.

Q. Did you keep a list of the voters?—A. Yes, sir; and had a book with the list of the voters in.

Q. What were you doing?—A. I checked them off as they voted.

Q. Did you challenge anybody there that day or have anyone to?—A. No, sir.

Q. Did you see anybody challenged?—A. I think a couple were held up who were not registered, that is all.

Q. Was there anybody on the other side that challenged them?—A. I think not.

Q. Did it turn out they had not been registered?—A. Yes, sir.

Q. Were they permitted to vote?—A. I think one was sworn in; I will not say, though.

Q. You don't know?—A. I don't remember as to that.

Q. Whereabouts was your seat?—A. On the west side of the booth.

Q. In relation to the gate, how close were you to the gate?—A. I was probably 8 feet.

Q. Which way?—A. North and west.

Q. You were seated north and west of the gate?—A. Yes, sir.

Q. Did you see Mr. Mosier there?—A. Yes, sir.

Q. Where did he have his seat?—A. Right opposite to me.

Q. Did you see Mr. Gardiner there?—A. Yes, sir; he was there part of the time.

Q. Did you go into the booth with any voter?—A. No, sir.

Q. Did you see any voter mark his ballot there that day at all?—A. No, sir; I did not.

Q. Did you hear anyone about the polls urging any voter or soliciting any voter to support or vote for any candidate upon any ticket that day?—A. No, sir; I did not hear anyone urge anyone or solicit their vote.

Q. What did you hear?—A. I heard a man say there were two men on the Republican ticket he wanted to vote for; one was Mr. Storrs, and the other, he couldn't remember which one it was. He was an old man, and Mr. Dunning says "J. M. C." and he says, "That is the man."

Q. Did you hear Evander Dunning make a suggestion of that kind to anyone else during the day?—A. No, sir.

Q. Where was Mr. Mosier at that time?—A. I think he was in the booth with the man himself.

Q. Mr. Mosier testified before the commissioner something to the effect that Mr. Dunning made a suggestion of that kind a great many times during the day, or several times during the day, until he became irritated and called him down for it; did you hear anything of the kind?—A. Nothing, only the once; that is all.

Q. Did Mr. Mosier say anything about that at that time?—A. Yes, sir; he spoke about it.

Q. Do you remember what he said?—A. Why, not exactly; I can't remember; he was talking a good deal; they were talking all day; I don't know what he did say.

Q. Was Mr. Mosier taking an active part?—A. Yes, sir.

Q. In the election throughout the day?—A. Yes, sir.

Q. Did you address yourself to any voter as to the manner in which a vote should be cast?—A. No, sir.

Q. Did you discuss the matter of voting with any elector during that day while you were in the polls?—A. I did not.

Cross-examination by Mr. ADAMS:

Q. You were the challenger there that day for the Republican Party?—A. Yes, sir.

Q. You were a Republican on that day?—A. Yes, sir.

Q. What is your age?—A. I am 46.

Q. How long have you lived in Charlotte?—A. Twenty-six years.

Q. You have been a Republican a great many years?—A. Yes, sir.

Q. All your life?—A. Yes, sir.

Q. Did you have a certificate as challenger there that day from the campaign committee?—A. Yes, sir.

Q. The Republican?—A. Yes, sir.

Q. Did you present your credentials to the election board?—A. Yes, sir.

Q. It was in writing?—A. Yes, sir.

Q. It was signed by whom?—A. It was signed by the chairman of the county committee, Mr. McPeck.

Q. This Mr. McPeck was the prosecuting attorney at that time?—A. I think he was; yes, sir.

Q. He was prosecuting attorney, was he not?—A. I think so.

Q. Were you out and in some during the day from the voting place in this third ward, outside of the times you went to your meals?—A. I don't think I was out of the room.

Q. The only time you were out of the room where the voting was being done that day, from the time that you got there in the morning up to the time the polls closed were the times you got a lunch at noon and supper at night?—A. I went to dinner; that time I was away. After the polls closed I left.

Q. You didn't go back any more?—A. No, sir.

Q. You left at 5 o'clock and didn't go back to the voting place again that day?—A. No, sir.

Q. How long were you gone to dinner?—A. A half or three-quarters of an hour.

Q. Mr. Mosier, the gentleman you referred to in your direct examination, was there as challenger that day?—A. I think so; yes, sir.

Q. For the Democratic Party?—A. Yes, sir.

Q. He is a very reputable, estimable citizen in Charlotte?—A. I think he is.

Q. And a neighbor of John M. C. Smith?—A. They live in the same ward.

Q. Didn't they live very close together?—A. We called them neighbors.

Q. How close together were they living, Mr. Smith and Mr. Mosier?—A. I think one block.

Q. A block apart?—A. I think they call that a block, 600 feet.

Q. You say that you did not go into any of the booths at all on that election day there?—A. I did not.

Q. You didn't hear any urging or soliciting at all?—A. Only the one time there.

Q. You got to the polls at 8 o'clock in the morning?—A. About 8 o'clock.

Q. You got back from dinner about 1 o'clock?—A. About it or a quarter past; I left at half past 12 o'clock.

Q. When you left to go to dinner that day, were all of the inspectors there?—A. I couldn't say as to that.

Q. Were all the clerks there?—A. I couldn't say.

Q. Were the gatekeepers both there?—A. I think one was there; I think probably the other one had gone to dinner.

Q. Which one was that?—A. I think Mr. Storrs.

Q. Who was the other gatekeeper?—A. Mr. Collins.

Q. Were all the inspectors there when you got back from dinner?—A. I couldn't say as to that.

Q. Were both of the gatekeepers there when you got back from dinner?—A. I think so.

Q. Were both of the clerks there when you got back from dinner?—A. I couldn't tell you as to that.

(It was conceded and stipulated upon the record that all of the election returns from the several voting precincts, as well as the envelopes containing the same, in the county of Eaton, State of Michigan, for the general election held therein on the 5th day of November, A. D. 1912, and which are now in the possession and under the control of the county clerk of the said county of Eaton, be, and the same are hereby, considered in evidence for the use of either party as the hearing proceeds, as well as the envelopes containing the same; as well also Exhibit 6, being a canvass of the votes of said election made by the board of county canvassers of Eaton County, subject to all objections upon the ground of irrelevancy, immateriality, and incompetency which may be made to the same or any thereof at the hearing.)

APRIL 11, 1913.

ALBERT H. SAYER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. In the township of Sunfield, Eaton County, Mich.

Q. Were you present at the general election held in the township of Sunfield on the 5th day of November, 1912?—A. Yes, sir.

Q. Did you officiate upon that election board at that election?—A. Yes, sir.

Q. How did you come to serve on the board?—A. Well, I was there when they opened up and they named me; elected me as one of the inspectors, or instructor, they called it.

Q. That was done by the vote of the bystanders?—A. Yes, sir.

Q. Those surrounding the polls at the opening?—A. Yes, sir.

Q. Now, was there any official oath administered to you?—A. Yes, sir.

Q. Administered to you alone or were the others sworn at the same time?—A. I think they were all sworn at the same time.

Q. When you say all sworn at the same time, who do you mean?—A. The rest of the board.

Q. Who were they; who was the supervisor?—A. J. H. Palmer.

Q. Was he sworn at the same time you were?—A. I think so.

Q. Who were the other members of the board?—A. D. W. Knapp, Dennis A. Hager, Mr. Bacon, and the two gatekeepers, Mr. Slayter and Mr. Gilbert, I think; I am not sure.

Q. J. H. Palmer was the supervisor of the township?—A. Yes, sir.

Q. You spoke of Mr. Bacon; what office did he hold?—A. Justice of the peace.

Q. He was justice of the peace of the township at that time?—A. Yes, sir.

Q. Mr. Hager, what office did he hold?—A. I think he was a justice of the peace, too; he was one of the members of the board I know.

Q. When you took the official oath of office, did you stand up with these men you have mentioned?—A. Yes, sir.

Q. Who administered the oath?—A. Well, now, I couldn't say whether Mr. Palmer or Mr. Bacon; one or the other.

Q. Did you commence your services there on that board in the morning?—A. Yes, sir.

Q. What did you do?—A. I handed out the ballots.

Q. Were the ballots initialed?—A. Yes, sir.

Q. Do you remember who initialed the ballots?—A. I am not sure, but I think Mr. Bacon did.

Q. When they were initialed, who were they handed to?—A. They were handed over to me.

Q. What kind of a situation did you have there in the polls?—A. Well, the voting booths were along here and I was on one side and the board was on the other.

Q. Did you have a table?—A. Yes, sir.

Q. To lay your ballots on?—A. Yes, sir.

Q. Did you have a chair there?—A. A table and a chair; yes, sir.

Q. Did you deliver a ballot to each voter as they were called off that day?—A. Yes, sir.

Q. Did you go in the booths with any voter?—A. I didn't go into the booth, I went to the door to show them, but I didn't tell them how to vote or anything of that kind.

Q. Did you mark anyone's ballot for them?—A. No, sir; one or two persons called me up to the door and asked me about it and I told them where to mark their ballots.

Q. Did you stand there to see the ballot was marked?—A. No, sir; I didn't see anyone mark their ballot.

Q. Witness, did you solicit any person to vote for any particular candidate for any office there that day?—A. No, sir; I did not.

Q. How long did you remain there at the polls?—A. From early in the morning until 12 o'clock and until 5 o'clock.

Q. You remained in attendance during the entire day, did you?—A. Yes, sir.

Q. And you delivered all the ballots that were voted?—A. Every one; yes, sir.

Q. What are your politics?—A. I am a Democrat.

Q. Did you support the Democratic ticket there at that election?—A. Yes, sir.

Q. Witness, were you in any way interested in the election of John M. C. Smith as a Member of Congress at that election?—A. No, sir.

Q. I will ask you this question, but you need not answer it unless you want to. Now, did you support John M. C. Smith for the office of Representative in Congress?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and in violation of the laws of this State which provide for a secret ballot, and it is the contemplation of the law that no such question should be asked any witness, and it is improper for the attorney to ask it.

Q. You can answer it if you desire to, if you are willing to. You are the only one who can waive the right; if you don't want to answer it, you don't have to.

Mr. CARNEY. I take it that every candidate is entitled to that same secrecy.

Mr. ADAMS. If you don't want to answer it, you don't have to.

The WITNESS. I supported Mr. Carney; I voted the straight ticket.

Q. Did you, while you were acting in that official capacity there at that election at any time during the day, solicit any support in any way for John M. C. Smith for Member of Congress?—A. No, sir; I did not.

Cross-examination by Mr. ADAMS:

Q. Did anybody else know how you voted that day at that election?—A. No, sir; not that I know of.

Q. You voted secretly and marked your ballot in private and alone?—A. Yes, sir.

Q. And folded it up?—A. Yes, sir.

Q. And it was deposited in the ballot box?—A. Yes, sir.

Q. Without being unfolded?—A. Yes, sir.

Q. So it was deposited in such a manner that it was impossible for anybody to see how you voted?—A. It certainly was.

Q. Any marks that you made on that ballot were filled in on the inside?—A. Yes, sir.

Q. It was a large ballot and had to be folded four or five times, didn't it, in order to make it small enough to get it in the ballot box?—A. Yes, sir.

Q. When you took the ballot and went in the booth with it, there were no marks on it to indicate any vote for any candidate?—A. No, sir.

Q. The only marks you put on it to indicate any preference for any candidate you put on it in private without anybody being where they could see you while you were in the booth?—A. Yes, sir.

Q. In such a manner that it was impossible for anybody to see what marks you put on it?—A. Yes, sir.

Q. And deposited it in the ballot box while the ballot was in that shape?—A. Yes, sir.

Q. And without it being unfolded after you had folded it up in the booth, and in that manner was placed in the ballot box without being unfolded again until it was taken out of the ballot box to be counted?—A. It was unfolded then.

Q. After you folded it up in the booth it was not unfolded again until taken out of the ballot box for the purpose of counting?—A. No, sir.

Q. Is to-day the first time you appeared as a witness here for John M. C. Smith?—A. I was subpoenaed once before, but was not a witness.

Q. Did you come to a former hearing of this contest in Charlotte?—A. I was here, but I was not a witness at that time.

Q. You came here to the city of Charlotte for the purpose of giving your testimony?—A. Yes, sir.

Q. A week or 10 days ago, didn't you?—A. I think about 2 weeks ago.

Q. You were then living in the township of Sunfield?—A. Yes, sir.

Q. And you live there now?—A. Yes, sir.

Q. That is how far from Charlotte?—A. About 20 miles.

Q. Were you subpoenaed the other time to come here and testify, or did you come voluntarily?—A. I was subpoenaed.

Q. Was there a paper served on you the other time when you came here, before you came?—A. Yes, sir.

Q. Who served it?—A. Mr. Healy, the deputy sheriff over there.

Q. Were you subpoenaed to come here this time?—A. Yes, sir.

Q. Did they pay you the witness fees the other time they subpoenaed you?—A. Yes, sir.

Q. Did they pay you your witness fees this time?—A. Yes, sir.

Q. Who subpoenaed you this time to come here on this occasion?—A. The same fellow, Mr. Healy.

Q. Now, as I understand you, on the 5th day of November, 1912, when this election was in progress in Sunfield Township, you handed out the ballots to the voters as they came in?—A. Yes, sir.

Q. Then, after the voters received their ballots from you, they stepped into the booths and marked them as they wanted to, then passed through on the other side of the booth and deposited their ballots with the election board there?—A. Yes, sir.

Q. You were on one side of those booths and the inspectors were on the other side?—A. Yes, sir.

Q. There were how many booths there?—A. Four.

Q. They were attached together, were they not?—A. Yes, sir.

Q. One right up against the other?—A. Yes, sir.

Q. Four booths long?—A. Yes, sir.

Q. You were on which side of them, as far as the points of the compass were concerned?—A. I was on the west side.

Q. On the west side of the four booths? And the other inspectors were on the east side?—A. Yes, sir.

Q. The booths were about 5 or 6 feet high, were they not; you couldn't see over them from where you were?—A. No, sir; I could not.

Q. You couldn't see the rest of the board by looking, or could you see through the booths and see the inspectors?—A. No, sir.

Q. So when you were handing out ballots the other members of the board were performing their duties on the east side of those booths; you couldn't see what they were doing?—A. No, sir.

Q. You were the only one there who was attempting to perform any duty at that election who was on the east side of the booths?—A. On the west side; yes, sir.

Q. How many ballots were handed out to you when you commenced in the morning?—A. I don't remember.

Q. As many as 10?—A. Yes, sir; more than that. I wouldn't say just how many, but I think about 50.

Q. Were handed out to you?—A. Yes, sir.

Q. More than 25 were handed out to you?—A. I think so; yes, sir.

Q. Then you started in with about 50 ballots you say that were handed to you, and as the voters came in, you gave each voter a ballot?—A. Yes, sir.

Q. Did you hand out all of those first ballots that were given to you, the first batch of ballots given you before you were handed any more ballots to distribute to voters?—A. Yes, sir.

Q. How many were handed to you in the next lot?—A. I don't remember how many were handed to me at any time, but I think about 50 at a time.

Q. Throughout the day?—A. Yes, sir.

Q. Do you know how many you had in your possession which had not been delivered to a voter or voters when the polls closed at 5 o'clock that day?—A. I do not.

Q. Did you have any?—A. I couldn't remember.

Q. When 5 o'clock came you didn't longer officiate in any way on that board, did you?—A. Yes, sir; I did after supper.

Q. How long did you stay there?—A. I stayed there until about 9.30 or 10.

Q. Then you went away?—A. Then I went home.

Q. And you didn't have anything more to do with the election?—A. No, sir.

Q. Didn't perform any more duties after 9.30 or 10 o'clock that night?—A. No, sir.

Q. What did you do after the polls closed and the counting commenced?—A. I went home to supper.

Q. After the counting commenced?—A. They commenced counting just as soon as they closed the polls.

Q. When 5 o'clock arrived the polls closed?—A. Yes, sir.

Q. And the board commenced counting the ballots?—A. Yes, sir.

Q. And you went home to supper?—A. Yes, sir.

Q. You didn't help count any before supper?—A. No, sir.

Q. You came back about what time?—A. About 7 o'clock.

Q. Then what did you do?—A. I went into the polling place there and was there about the election; I didn't suppose I had anything more to do, but Mr. Mapes was on the board and he asked me if I would not take his place a while, he was getting tired—he was tallying—and I told him I would.

Q. So you tallied a while?—A. Yes, sir.

Q. Did you tally then up to the time you left?—A. I tallied until just before the post office closed at 9 o'clock. I wanted to get my mail and I asked Mr. Witherall to take my place while I went and got my mail, so he took my place.

Q. Who was Mr. Witherall?—A. He is a lumber dealer and coal dealer.

Q. He was not a member of the election board that day?—A. No, sir.

Q. Where was he standing when you asked him to take your place?—A. He was around there somewhere, I don't know just where.

Q. He was not sworn when he commenced to perform the duties you were performing?—A. No, sir.

Q. He hadn't been sworn at any time that day that you know of?—A. Not that I know of.

Q. What did he do?—A. He tallied in my place while I went after the mail.

Q. How long were you gone after the mail?—A. Well, I was gone probably 15 or 20 minutes.

Q. When you got back, did you relieve Mr. Witherall, or did he keep on tallying?—A. I relieved him.

Q. What did he then do?—A. He went home.

Q. Who did you say you thought swore in the officers there that day; the members who acted on that election?—A. I think Mr. Bacon or Mr. Palmer; I will not say which.

Q. Who swore in Mr. Bacon?—A. I don't remember.

Q. You haven't any recollection that Mr. Bacon was sworn in by anybody, have you?—A. I don't know who it was.

Q. You don't know whether he was or not?—A. No, sir.

Q. You didn't hear anybody administer an oath to Mr. Bacon, did you?—A. No, sir; I don't remember that I did.

Q. You were right there all the time after the polls opened up until an adjournment was taken at the noon hour, were you not?—A. Yes, sir.

Q. Every minute?—A. Yes, sir; he might have been sworn in; I don't remember; it has been a good while since then.

Q. He was a justice of the peace?—A. Yes, sir.

Q. They swore you in to act as instructor?—A. Yes, sir.

Q. That is the way you understood you were sworn in at the time the oath was administered to you?—A. Yes, sir.

Q. I notice here you signed the oath referred to, Exhibit 13, that is your signature on page 4 of this poll book, Exhibit 13?—A. Yes, sir.

Q. Albert Sayer?—A. Yes, sir.

Q. Read that oath.—A. (Reading:) "State of Michigan, county of Eaton. ss I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of instructor of this election, held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability."

Q. Then what?—A. "Sworn and subscribed to before me this 5th day of November, A. D. 1912. Frank H. Bacon, justice of the peace."

Q. That is your signature to that which we just read?—A. Yes, sir.

Q. You signed it on that election day there, didn't you?—A. I think so; yes, sir.

Q. You did; that is your recollection?—A. Yes, sir.

Q. Now, is it not a fact that you were sworn in separately from the others; that is, you were not all sworn in at the same time; that is what I mean by

that, by one and the same oath, were you?—A. I can't remember now whether I was or not.

Q. You took an oath to act as instructor there and Mr. Palmer and Mr. Hager took an oath to act as inspectors, and Mr. Mapes and Mr. Knapp took oaths to act as clerks, and Mr. Gilbert and Mr. Slater took oaths to act as gatekeepers?—A. Yes, sir.

Q. They swore in the gatekeepers by themselves and the inspectors by themselves?—A. Well, now, I wouldn't say; I don't know whether they were or not, I have forgotten about that.

Q. Let me call your attention to these oaths. It would be pretty difficult to swear them all in by one oath where one fellow swears to one thing and another to another. I call your attention to Exhibit 13 again, and you will notice that two of these there, one signed by Mr. Gilbert and the other by Mr. Slater, is, "I will faithfully discharge the duty of the office of gatekeeper of this election"?—A. Yes, sir.

Q. Your oath reads: "Discharge the duties of the office of instructor of this election"?—A. Yes, sir.

Q. And the two oaths of the clerks read among other things: "I will faithfully discharge the duties of the office of clerk of this election"?—A. Yes, sir.

Q. And the oaths of the inspectors read: "I will faithfully discharge the duties of the office of inspector of election," among other things. Now, calling your attention to these oaths as they are signed here, for the purpose of refreshing your recollection, don't you now recall that Mr. Palmer and Mr. Hager, the two inspectors, were sworn in as inspectors, and that Mr. Mapes and Mr. Knapp were sworn in as clerks separately under a separate oath and independent of Mr. Palmer and Mr. Hager, and that Mr. Gilbert and Mr. Slater were sworn in separately from the others to participate there on that board that day; does not that refresh your recollection as to the fact about it?—A. It may be, but I couldn't say; I don't remember about that.

Q. You think that Mr. Bacon initialed the ballots?—A. I think he did; yes, sir.

Q. Then, of course, Mr. Bacon was on the other side of the booths when he initialed the ballots, if he did?—A. Yes, sir.

Q. You couldn't tell whether he did from where you were; whether he initialed them or not?—A. I couldn't tell you whether he did all of them or not; no, sir.

Q. Are you sure he initialed any of them; did you see him initial any of them?—A. I don't know as I did.

Q. In fact you didn't see anybody actually put the initials on the ballots, did you?—A. As I remember, his initials were on the ballots; that is all I can tell you about it; that is as near as I can remember.

Q. I understood you to say that one or two voters that day called you up to the booth when they were in the booths?—A. Yes, sir.

Q. And asked you some questions about the ballots?—A. Yes, sir.

Q. About how to mark them?—A. Yes, sir.

Q. And you told them?—A. Yes, sir; I told them how to mark them.

Q. How many different men would you say you did that with that day?—A. I think two.

Q. There might have been more?—A. I don't think of any but the two.

Q. Did you see anybody mark their ballot?—A. No, sir.

Q. Did you see one man mark a ballot that day?—A. I saw one man mark his ballot outside before he went in the booth.

Q. Was that in the forenoon or the afternoon, or don't you recollect?—A. It was in the afternoon.

Q. You saw him mark it?—A. Yes, sir; I couldn't help to; he marked it on my table there.

Q. Did you see any others mark their ballots that day?—A. No, sir.

Q. Did you see those two men who called you up to the booths when they were in there; did you see either of them mark their ballot—make any marks on it?—A. No, sir; I don't remember as I did.

Q. Did you talk with the man who marked his ballot on the table?—A. I didn't say anything to him.

Q. Did he say anything to you?—A. No, sir; he said he couldn't see in the booth and he marked it outside.

Q. You went to dinner or lunch at noon; at what hour?—A. At 12 o'clock.

Q. At noon?—A. Yes, sir.

Q. You got back at what time?—A. 1 o'clock.

Q. Did the rest of the board go to the noon-day meal at 12 o'clock?—A. I don't know whether they all went or not.

Q. Did the board adjourn the voting there at noon?—A. Yes, sir.

Q. What was done in the way of an adjournment?—A. Well, they went out; I can't say whether—

Q. What was done?—A. They went out—one member of the board—I don't know which one now—went to the door and called out that the polls would be closed for one hour—from 12 to 1 o'clock.

Q. When you got back there they hadn't commenced, or had they?—A. No, sir.

Q. When you got back right after dinner, about 1 o'clock, they hadn't opened up the polls yet?—A. No, sir.

Q. Well, I supposed they just commenced voting; didn't make any announcement, did they?—A. I think they did.

Q. You think they did?—A. Yes, sir.

Q. Who made the announcement?—A. I couldn't say.

Q. Can you say there was an announcement?—A. No, sir; I don't recall that.

Redirect examination by Mr. MAYNARD:

Q. What is your age?—A. I am 42.

Q. What is your occupation?—A. I was a hardware merchant; I sold out; I haven't any now.

Q. How long have you been located there?—A. Two years.

Q. Do you own a farm in that vicinity?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

A. Yes, sir; I own a farm.

Q. When you delivered the ballots to the voters, did you make any announcement of each ballot?—A. No, sir.

Q. Did you give the number of the voter and the number of the ballot you gave him?—A. No, sir.

Q. Was not that given to the tally clerk?—A. Not on my side it was not; all I did was to hand the ballot, and if they asked me how to vote—if they didn't know how to vote—I would tell them. If they wanted to vote a straight ticket, I would tell them about marking at the top there a cross, if that was the ticket they wanted to vote; several of them asked me that.

Q. When did you sign up this book Exhibit 13?—A. I don't remember.

Q. To refresh your recollection, do you know anything about the board getting together at the office of the justice of the peace, Bacon, the next day after election and signing up these returns?—A. I was not there.

Q. Do you know when they signed this book?—A. I do not; I signed it the same day as the rest of them; I didn't sign it the next day.

Q. You say you kept tally—that is, on the night of election?—A. Yes, sir.

Q. Who was keeping tally at the same time you were?—A. D. W. Knapp.

Q. When you were keeping tally who was calling off?—A. Dennis A. Hager.

Q. One of the election board?—A. Yes, sir.

Q. A justice of the peace?—A. Yes, sir.

Q. When he called off the candidates what did you do?—A. I tallied them as he called them off.

Q. Did you keep an honest and correct tally?—A. Yes, sir.

Q. Just as he called them off to you?—A. Yes, sir.

Q. When you were here recently in obedience to a subpoena served on you, do you know whether the attorneys for the contestee, John M. C. Smith, offered to have you sworn and give your testimony that night and that the attorney for the contestant, Judge Adams, refused to consent to take your testimony at that time? Did you hear us talk that in there?—A. That is what Mr. Smith told me.

Mr. ADAMS. I move that go out as irrelevant, incompetent, and immaterial.

Mr. MAYNARD. That is true; we subpoenaed him but gave you no notice of taking his testimony, and we offered to have him sworn, and Judge Adams thought they could not consent to take the testimony without a notice.

Mr. ADAMS. I object to counsel stating something at this time that occurred at a prior time as incompetent, and I move to strike it out and expunge it from the record. It is incompetent for counsel to make a statement of a past event or occurrence and get himself on the record as a witness in this case in that way.

Mr. MAYNARD. I call upon and challenge Judge Adams, the attorney for the contestant, to dispute the correctness of the statement I make.

Mr. ADAMS. I do dispute the correctness of the statement. That is not what occurred as it occurred; that is not correct, according to my recollection of it.

APRIL 4, 1913.

THOMAS H. THORNE, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Thorne, where do you reside?—A. Battle Creek.

Q. What is your age?—A. I am 50.

Q. Do you hold any official position?—A. Yes, sir.

Q. What is it?—A. City recorder.

Q. How long have you been city recorder?—A. Oh, approximately six years.

Q. You were city recorder at the general election held in the second precinct of the second ward of the city of Battle Creek on the 5th day of November, 1912?—A. Yes, sir.

Q. To whom was the custody of the ballot box so delivered after the election in the city of Battle Creek?

Mr. ADAMS. I object to that as incompetent and not the best evidence; the charter speaks for itself.

A. To the recorder.

Q. To whom was the custody of the ballot box delivered after the general election held on the 5th day of November, 1912, in the second precinct of the second ward of the city of Battle Creek?—A. To the recorder.

Q. Who was the recorder?—A. Myself.

Q. Was that taken from your possession later?—A. Not to my knowledge; no, sir.

Q. Did you appear here before the board of county canvassers with your ballot box in charge?—A. I did; yes, sir.

Q. Do you remember the date?—A. I do not.

Q. Did you come more than once?—A. Once only.

Q. At the time you were here with it, what was done with it?—A. The box was opened.

Q. What was done with it?—A. After the commissioners got through with the box it was locked.

Q. To whom was it delivered?—A. To myself.

Q. What did you do with it?—A. I took it to Battle Creek.

Q. Has it been in your custody ever since?—A. Yes, sir.

Q. Where is the ballot box this morning?—A. In the court room.

Q. In whose charge?—A. My charge.

Q. Has it remained locked and sealed from the time it was delivered into your possession here in this courthouse at the time the board of county canvassers had it before them until now?—A. No, sir.

Q. What was the occasion of it being unlocked or unsealed?—A. To remove the registration book, also the enrollment book.

Q. When was that?—A. I don't remember the date.

Q. After the recent primary election?—A. Prior to the primary election.

Q. The one that was held this year?—A. Yes, sir.

Q. Who was present when the box was opened?—A. The custodian alone.

Q. That is yourself?—A. No, sir; the janitor in the city hall, the general utility man.

Q. Were you present?—A. No, sir.

Q. Do you know what was done with the box after that?—A. I directed them to lock up the box.

Q. Do you know of your own knowledge?—A. No, sir.

Mr. ADAMS. I move to strike out what he instructed them.

Q. What is the condition of that ballot box now?—A. It is locked.

Q. Is it sealed?—A. Yes, sir.

Q. When you were here before the board of county canvassers, what was done with the box?—A. I saw the box opened and the contents taken out; as I remember, they were rolled up but not disturbed by anyone.

Q. What further did you see?—A. As I remember, the poll books were taken out and examined by the county election commissioners.

Q. Who was present?—A. Ray Hart, James C. Smith, and Mr. Davis; the other two gentlemen I didn't know—three gentlemen.

Q. Were there any members of the election board there?—A. Yes, sir; the two Christians were present, and also Mr. Nelson.

Q. Inspectors of election of that precinct?—A. Yes, sir.

Q. After they had examined the contents, what was then done?—A. The contents were put back in the box, and the commissioners locked and sealed the box.

Q. Was there any attempt upon the part of anyone there to open or examine those bundles of ballots?—A. Not to my knowledge.

Q. In what condition or situation were those ballots; how were they bundled together?—A. I didn't notice, only that I know they were rolled up and tied.

Q. Rolled up in rolls and tied up?—A. Yes, sir; I didn't examine them.

Q. There were several rolls?—A. Yes, sir; I don't know how many.

Cross-examination by Mr. ADAMS:

Q. How long ago was this ballot box opened next after the board of county canvassers had the box?—A. I couldn't state exactly, but it was prior to the primary election.

Q. Of your own knowledge, you don't know whether it was opened at all after the board of county canvassers opened it?—A. No, sir; I do not; only I instructed the man to open the box.

Q. Then, of course, you don't know if he did open it what he did with the ballots when he opened it?—A. No, sir.

Q. You don't know of your own knowledge now whether the ballots are the same ballots or have in any particular been changed from what they were when the box was brought here after the election before the board of county canvassers?—A. I couldn't swear to it; no, sir.

Q. The janitor in your building where your office is located at Battle Creek is the man who does the general janitor work?—A. Yes, sir.

Q. The public utility man you speak of?—A. He does the janitor work.

Q. The janitor of the building, doing the sweeping, etc., in the building; you helped him to open that ballot box?—A. Under my instructions; yes, sir.

Q. You didn't give any personal supervision to the opening of it, or anything of that kind, yourself?—A. Only instructions; not personally.

Q. I mean you were not actually present?—A. No, sir.

Q. You turned it over to a couple of janitors in the building to open the ballot box?—A. There wasn't two; there was but one.

Q. One and the same man?—A. Yes, sir.

Q. The janitor and the public utility man are one and the same person?—A. Yes, sir.

Q. You instructed him and gave him the key of the box?—A. Yes, sir.

Q. And instructed him to go there and open up these ballots that had been voted at the November 5, 1912, election?—A. To open the ballot box.

Q. After he opened the ballot box he had free access to the ballots, if he wanted to?—A. Yes, sir.

(It was consented on the record that John James may be subpoenaed and put on the stand by the contestee without further notice.)

STARR K. CHURCH, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Marshall.

Q. What is your age?—A. I am 45.

Q. What is your occupation?—A. I am a physician.

Q. Were you present at the general election held in the second ward of the city of Marshall on the 5th day of November, A. D. 1912?—A. Yes, sir.

Q. What, if any, official connection did you have with the election board that day?—A. I suppose I was an inspector, although I acted as clerk both; but I was really an inspector.

Q. What time did you arrive at the polling place?—A. I presume in the neighborhood of 7 o'clock.

Q. Did you remain there throughout the day?—A. I did, off and on.

Q. Witness, did you see any voters there who had assistance in marking their ballots during the day?—A. Yes, sir.

Q. More than one?—A. Yes, sir.

Q. Several?—A. My recollection is, it seems to me, there were at least two or three that had assistance.

Q. Who went in the booth with them to assist them?

Mr. ADAMS. Objected to as leading.

A. You can't assist a man to mark his ballot unless you go in the booth.

Q. Who went in the booths with them to assist them?—A. Different inspectors at different times.

Q. Can you mention any?—A. Mr. Simmons, chairman of the board, is one I know of.

Q. What did you see him do?—A. I didn't see him do anything; I heard him.

Q. What did you hear him do?—A. I heard him tell the man who was blind who the candidates were; there was one blind man went in to vote, and another party; two of them were blind.

Q. Any others?—A. There was one man went in; yes, sir.

Q. Who?—A. A man named Hatch.

Q. Who was Mr. Hatch?—A. He was a candidate for prosecuting attorney on the Bull Moose ticket.

Q. What did you see him do?—A. He went in the booth as a challenger to help mark a ballot or assist.

Q. Who did he go in with, do you remember?—A. My impression is it was Mr. Simmons; it might have been one of the two. I think it was Mr. Simmons.

Q. Did you see Mr. Hatch go into the booth more than once?—A. That is the only time.

Q. Did anyone of the inspectors go in with that man when Mr. Hatch did, or did Mr. Hatch go in alone?—A. I think Mr. Simmons was the inspector who went in.

Q. Do you remember who the voter was?—A. No, sir; I can't remember. I have tried to.

Q. Was there any oath administered to the voter that he was unable to read the English language or that he was physically unable to mark his ballot?—A. I have no recollection of an oath being administered.

Q. Did you hear any oath administered to any voter there before he was assisted as to whether he was able to read the English language?—A. I don't remember. The board knew all the voters, and they knew they could not see, and I don't think any oath was administered to them.

Q. Did you see anyone assisted in marking their ballots that were not blind, that you didn't know were blind?—A. I merely remember of two. One was an old man—he has since died—and another was blind; and the talk was such it made an impression on my mind. When he was voting he talked about the candidates; I remember him especially. I remember this particular instance where Mr. Hatch went in. As to an oath being administered, I don't know anything about that.

Q. Witness, is it true that there were only two men assisted in marking their ballots in that precinct that day?—A. I couldn't say.

Mr. ADAMS. I object to counsel cross-examining his own witness.

(Last question read.)

A. I will answer that question in this way: I was talking with the chairman of the election board and I asked him that question——

Mr. ADAMS. Wait a minute. I object to the witness stating the conversation he had with the chairman of the board as hearsay and is irrelevant, incompetent, and immaterial.

The WITNESS. I would say that I have no recollection of there having been more than two go in there; I didn't suppose it would amount to anything, and I don't remember it.

Cross-examination by Mr. ADAMS:

Q. Those two men that received assistance, whatever that assistance, were both very old men?—A. One was an old man; the other was not.

Q. The one who was not old was blind?—A. Blind enough so he couldn't read; he could get around.

Q. The other one was a very feeble old man?—A. Yes, sir.

Q. Looked to be feeble?—A. He was.

Q. He appeared to you to be a very feeble man?—A. Yes, sir; he was a feeble man.

Q. About how old was he?—A. He was over 80.

Q. The old man who received instructions was over 80 years of age?—A. Yes, sir. I am not saying positively; I think he was about that.

Q. That is your judgment?—A. Yes, sir.

Q. And you, at the time you were acting on this particular election board, was a practicing physician?—A. Yes, sir.

Q. And had been practicing possibly at Marshall here for some time?—A. Fifteen or eighteen years.

Q. You are a physician now?—A. Yes, sir.

Q. You observed this old man when he was in there that day?—A. Yes, sir.

Q. You knew him before, possibly?—A. Yes, sir.

Q. Had known him for some time?—A. Yes, sir.

Q. It was your judgment from his present appearance that he was not physically able to mark his ballot?—A. He couldn't do it.

Q. The old gentleman could not even see?—A. I knew he couldn't see to mark his ballot.

Q. The other one who had instructions was blind?—A. Yes, sir; the man was not so blind but he could get around and recognize you, but he could not read the ballot, he said.

Q. That is the old man?—A. No, sir; the man about 55.

Q. Had you known him here for some time?—A. Yes, sir.

Q. You knew that the younger one of the two had defective eyesight?—A. Yes, sir.

Q. You had known that for some time?—A. Yes, sir.

Q. Before this election?—A. Yes, sir.

Q. You were one of the Republican inspectors on the board?—A. Yes, sir.

Q. And Mr. Simmons was another inspector?—A. Yes, sir.

Q. Who was the other?—A. Sam Warren.

Q. Mr. Simmons was a Republican?—A. Yes, sir.

RAY E. HART, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Hart, where do you reside?—A. Battle Creek.

Q. What is your age?—A. I am 37.

Q. How long have you lived in Calhoun County?—A. It will be 28 years Monday.

Q. Have you ever held any official position of any kind?—A. Yes, sir.

Q. What kind of an office did you hold?—A. County clerk.

Q. When did your term of office expire?—A. January 1, 1913.

Q. When the general election was held on November 5, 1912, were you holding an office of any kind?—A. Yes, sir.

Q. What was it?—A. County clerk.

Q. Were you a member of the board of county canvassers?—A. I was clerk of the board.

Q. When the returns were filed here with the county clerk, did you receive the returns from the second precinct of the second ward of Battle Creek of that election?—A. I did, with others.

Q. Did you submit those returns to the board of county canvassers when they convened on the 12th of November last?—A. I don't recollect the date: I submitted the returns when the board of county canvassers met.

Q. It already appears by the testimony of the contestant that it was on the 12th day of November?—A. If that is the day they met for the official canvass, they were submitted upon that day.

Q. Did you examine the returns that came to your hands from the second precinct of the second ward of Battle Creek of that election?—A. Specify the time; when?

Q. At any time after they came to your hands?—A. Yes, sir.

Q. When did you first examine them?—A. I first examined the tickets as they came into the office to see what condition they were in. Some were marked—some came by express and some came by postal and some—I am hardly able to answer that question intelligently in that form.

Q. Answer it in your own way.—A. As I say, I examined the tickets and found some of the seals broken that were broken by the postal authorities. I am trying to get to the point; I don't know without examining that ticket whether it was open or not.

Mr. ADAMS. As far as the witness's answer relating to the second ward of the city of Battle Creek, I move to strike it out as incompetent, irrelevant, and immaterial, and object to it on the same ground.

Q. I hold in my hand here Exhibit 40 and ask you what that is?—A. An envelope that was returned from the second precinct of the second ward of Battle Creek that came into my possession the 8th day of November, 1912.

Q. To whom is that addressed?—A. To the county clerk.

Q. What does it contain?—A. The election returns from the second precinct of the second ward.

Q. What are they?—A. The poll book.

Q. What exhibit is that?—A. It is marked "Exhibit 41." And one tally sheet marked "Exhibit 42" and a statement book marked "Exhibit 43."

Q. Witness, did you examine those returns before the board of county canvassers met?—A. I did.

Q. Did you discover any discrepancy in them; if so, what?—A. I did.

Mr. ADAMS. Wait a minute; I object to that as incompetent, irrelevant, and immaterial and the returns speak for themselves.

The WITNESS. I discovered that the straight vote on each and every political party outside of the presidential electors hadn't been figured into the results of the various candidates of each political party.

Q. Beginning where?—A. (Witness refers to book.) The governor, I think, was the first.

Q. From governor down, was it?—A. Yes, sir; each political party.

Q. When the board of county canvassers convened, did you call their attention to that discrepancy?—A. I did.

Q. What is Exhibit 44?—A. The poll book from the second precinct of the second ward.

Q. By that poll book how many votes were returned as having been cast in that precinct?—A. Three hundred and seventy-five.

Q. How many votes were shown by Exhibit 42 to have been cast for the presidential electors, the totals?—A. I will have to figure that.

Q. Doesn't the book show? Take the Republican.—A. The tally sheet or Exhibit 42.

Q. From them does it appear how many votes were cast for President?—A. For each political party, but not collectively; I will have to figure that.

Q. Give us that.—A. Collectively?

Q. Yes; how many for the Republicans and Democrats, one elector for each political party, the highest number anyone received?—A. Ninety-six is the highest there and 57 is the highest there. For information, may I ask, do you want this question answered the total number collectively or the total number of each political party—the maximum number of each political party?

Q. The maximum number of each political party?—A. For the Republican electors, the highest number was 96; for the Democratic electors, 57; the Prohibition electors, 4; Socialist electors, 108; Socialist Labor electors, 18; National Progressive electors, 91; a total of 374.

Q. They tallied within one vote on the question of the election for President, within one vote as many as you had on the poll list?—A. That is correct; yes, sir.

Q. From the President down through all there was sufficient to show you that there had been a mistake made?—A. Commencing with the office of governor and each office of each political party.

Q. Take Exhibit 42. Are you able to state from that how many split votes had been received for each candidate, from governor down, from the figures set out to the right?—A. Yes, sir.

Q. After the name which appears in the second column on the left page, what do you find opposite each name?—A. Individual check marks.

Q. Tallies?—A. Tallies.

Q. What do they correspond in number with?—A. They correspond with the number of total split votes recorded in that column opposite that name.

Q. To the right of the page?—A. Yes, sir.

Q. As the books first appeared before you, did anyone of those offices, from governor down, have any straight votes?—A. No, sir.

Q. What did the board of county canvassers do when their attention was called to this evident error upon the part of the election board?—A. After going over the situation and examining the books they asked me to summon before them the inspectors, together with the ballot box.

Q. Of the second precinct of the second ward of the city of Battle Creek?—A. Yes, sir.

Q. Did you do that?—A. I did.

Q. And they came?—A. They did.

Q. What was done?—A. They brought the box, and one of the inspectors opened the box and they examined the contents.

Q. What did they do to examine the contents?—A. Either Mr. Schneider, chairman of the board, or one of the inspectors, I am not able to state which,

reached into the box and took out, which was on top, several rolls of ballots on the back of which was marked "D. straight" and "R. straight," and took that roll and laid it in a chair that was there adjoining the table. The box was completely filled, and they took out several of those rolls, and they ran their hands down into the box to see what papers and what the contents of the box were.

Q. Did they remove anything else at that time but those rolls? Referring to the first appearance, I am talking about.—A. Yes, sir; the first appearance. I recollect nothing that they removed from the box.

Q. But the rolls?—A. But the rolls.

Q. Did they open up those rolls, or did they attempt in any way to count the ballots?—A. No, sir.

Q. What did you find on those rolls?—A. What I would term a memorandum mark, "R. straight" and "D. straight."

Q. On the rolls themselves, on the backs of them?—A. Yes, sir; and "S. straight," and the number in figures.

Q. Did these election inspectors there claim that they knew what those figures represented or stood for?

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and hearsay and the conclusion of the witness.

A. I couldn't say that the inspectors so stated in the presence of the county canvassers.

Mr. ADAMS. I object to the witness stating what the inspector said there.

Mr. MAYNARD. That is what I asked him.

Mr. ADAMS. I object to showing by the witness what the inspector said there as incompetent, irrelevant, and immaterial.

A. The inspectors present stated to the commissioners—that is, the board of county canvassers—that the memorandum upon the back of these rolls indicated the total number of ballots counted; that is, "D." stood for Democrat and the number stood for the number of straight Democratic ballots, "R. straight" represented the straight Republican ballots, and the figures on the back represented the number enrolled, and so on down through the various rows.

Q. From those figures appearing on those rolls did this board of election inspectors from the second precinct of the second ward of the city of Battle Creek, Mich., did they correct their returns and enter upon Exhibit 42, on their return book they had there, the straight ballots that had been given to each party and make that return anew to the board of county canvassers?—A. The chairman of the board of county canvassers, together with the two inspectors, took a sheet of paper and as one of the inspectors called off the number that appeared upon the back of each one of those rolls—say, "R. straight" so many—and along on down, the chairman did—"D. straight," so many; "S. straight," so many; and made a memorandum. Then the two inspectors who were present took that memorandum that was made in the presence of each one of them and corrected the returns. Now, this was at the first meeting.

Q. From that how many straight Republican votes did they give John M. C. Smith for Member of Congress?—A. They gave John M. C. Smith 66 straight votes.

Q. How many split votes?—A. I will say, Mr. Maynard, that the 31 already had been recorded in the tally sheet; they added 66 to the 31 already recorded.

Q. They made a total of how many?—A. A total of 97.

Q. Claude S. Carney, they gave how many straight Democratic votes?—A. They gave him 38 and added that to the 23 already recorded.

Q. It made how many?—A. That made 61.

Q. Witness, do you know whether or not that board of election commissioners were called before the board of county canvassers again?—A. They were called again.

Q. At the first meeting, who locked up the ballot box when you got through?—A. One of the inspectors.

Q. Now, after this board of inspectors had corrected their returns, as you say, what was the next move that was made in relation to this congressional contest; what was the next thing that happened; did Claude S. Carney appear before the board the next day?—A. I don't know; I was not present.

Q. Did the board of election inspectors from that precinct convene again before the board of county canvassers?—A. They did.

Q. How long after the first time?—A. The first time they appeared was the 13th day of November and the second time was on the 19th of November.

Q. Were you present when they appeared on the 19th?—A. I was.

Q. Who appeared?—A. Harry Christian, Fred Christian, and W. D. Wilson.

Q. State what was done at that time when they appeared; was the ballot box unlocked?—A. Yes, sir.

Q. By whom?—A. By Thomas Thorne, the city recorder.

Q. Were those election commissioners then asked to make a further or corrected or amended return?—A. They were summoned there for that purpose and were asked to do so.

Q. Were they given the poll books and return books?

Mr. ADAMS. I object to that as leading and suggestive, and object to that mode of examining the witness.

A. The books were turned over to the inspectors.

Q. Were they again permitted to examine the rolls on which these numbers appear?

Mr. ADAMS. Objected to as leading.

A. They didn't examine the rolls; Fred Christian took from the ballot box at the time it was opened first a memorandum that he made at the time the straight ballots were counted. when the ballot box was opened the second time before the board of county canvassers.

Q. When did he make this memorandum you speak of?—A. He stated to the board of county canvassers that it was a memorandum he made the night they counted the ballots.

Q. The night of election?—A. Yes, sir; when they counted the ballots.

Mr. ADAMS. I object to that and move to strike that out as hearsay and incompetent.

Q. Where did he get that memorandum?—A. Out of the ballot box.

Q. Was it one of the papers included or locked up in the ballot box?—A. It was in the ballot box, locked up.

Q. Did they then make an amended return?—A. They did; yes, sir.

Q. Did that differ from the one they made at the first meeting?—A. The result was not changed.

Q. State whether or not there was any variation in the result found by this election board than they found on the 13th of November and the one which they made on the 19th.—A. The returns made by the board of inspectors on the 19th day of November, which was the last return made, did not differ from the return made by the two inspectors who appeared before the board of county canvassers on the 13th day of November.

Cross-examination by Mr. ADAMS:

Q. I notice you seem to differentiate somewhat when you say the result was the same. When the inspectors were before the board of county canvassers the first time, how did they get at the figures to make the changes?—A. They took the rolls that were removed from the box and laid them in a chair, and on the back of those rolls there was a memorandum, so many figures like 175—

Q. Did you see the memorandum on there?—A. Yes, sir.

Q. You examined it yourself?—A. I sat where I could see.

Q. You saw what the memorandum was?—A. Yes, sir.

Q. What was the memorandum?—A. I couldn't give you the figures, but it would say "D" and then some figures, and I think some were written out 'straight.'

Q. Were they written out "straight," any of them?—A. I think on one package was written out "straight."

Q. Some straights in every package in the ballot box?—A. They didn't have the word "straight" written out. I think the memorandum—

Q. Every package, every roll of ballots in the ballot box had written on it "Str." or "straight"?—A. I didn't say that.

Q. Is that true?—A. I didn't examine all the packages in the box, so I couldn't testify as to that. I simply saw the packages they took out and put on that chair, and saw what the two inspectors claimed the memorandum was on the back as to the straight ballots, and from that memorandum on the back the chairman and the two inspectors made out the list.

Q. I don't care for so much as you are giving. I am putting some questions to you and I want an answer to the questions.

Mr. ADAMS. I move to strike that out.

(Last question read.)

A. I would not say that is true; I did not examine the rolls or packages in the box.

Q. Every package or roll of ballots in that box that you say had written upon it "D. Str." or "D. straights"?—A. I didn't say that.

Q. Every package of ballots that you say that came out of that ballot box had written on it "R. Str." or "R. straight"?—A. That is not what I said.

Q. Is that so?—A. No; that is not so.

Q. The first time the inspectors came before the board of county canvassers were you present when they arrived before the board?—A. Yes, sir.

Q. Were you present when the ballot box was opened?—A. Yes, sir.

Q. Who unlocked it?—A. Well, I don't know whether—

Q. Or didn't it have a lock on?—A. Yes, sir; it was sealed.

Q. I am talking about a lock first, did it have a lock on?—A. Yes, sir.

Q. Did somebody have the key to unlock it?—A. Yes, sir.

Q. Do you remember who unlocked it?—A. I couldn't say which one of the inspectors.

Q. When it first came before the board of county canvassers when you were present, was the ballot box sealed in any way?—A. Yes, sir; it was sealed.

Q. It was sealed?—A. It had a string tied around over the leather band and was sealed.

Q. Where was the sealing wax?—A. I think it was just above the lock that the string tied around.

Q. What was the seal; what was the modus operandi of the seal as you observed it on that box at that time; just describe how it was done.—A. With a shoe string tied around through the staple of the box and around over the leather band and tied in a knot and sealing wax placed over it.

Q. The sealing wax was on the piece of leather?—A. I think so.

Q. Are you sure about that?—A. Yes, sir.

Q. That is the way it was?—A. Yes, sir.

Q. Now, they broke the seal, did they?—A. Yes, sir.

Q. Who did that?—A. Well, it would be hard for me to say whether one of the inspectors or Mr. Schneider, the chairman; I wouldn't want to be positive about that; but one of the two.

Q. Do you remember who produced the key to unlock the lock?—A. One of the inspectors.

Q. He pulled it out of his pocket, did he?—A. I didn't observe that.

Q. He handed out the key to somebody to unlock the box?—A. I think he produced the key and stepped up and unlocked it.

Q. Then they opened the box?—A. Yes, sir.

Q. And took out some of the rolls of ballots?—A. The box was opened and was examined by everybody before anything was taken out.

Q. Were there any books in there?—A. Yes, sir; I saw some books in there.

Q. What books did you see in there?—A. Well, I recall the registration book.

Q. The registration book?—A. Yes, sir.

Q. Registration of what?—A. Registration of the voters who were registered in that precinct. It wasn't opened up, but I saw the book that was used.

Q. That was the only book you found in there?—A. Well, I will say this: I would not be able in detail to say exactly every package or book that was in there.

Q. I am not asking you anything about packages just now. I want to know whether that registration book was the only book that was in the ballot box that you saw that first time?—A. I will not say it was.

Q. Well, do you remember of any other book?—A. I don't recollect now.

Q. You don't remember of any other book being in there that first time?—A. It seems to me there was; but I don't recollect.

Q. Were the books on top or in the bottom of the box?—A. Down toward the bottom.

Q. They took all the rolls of ballots out, then, did they?—A. No, sir.

Q. They had to get the books from out of the bottom?—A. They could run their arm down in the box and reach them.

Q. That is the way they got the books from out of the bottom?—A. Yes, sir.

Q. There was no memorandum in there at that time that you saw, was there?—A. There was a—

Q. Was there any memorandum in there loose. Now, I don't mean any memorandum noted on the ballot rolls, but did you notice that first time, when you were looking to see what was in there, any memorandum upon a sheet of paper,

or anything of that kind, in the ballot box?—A. Well, now, Mr. Adams, there was so much stuff in that box I couldn't state.

Q. The question is as to your recollection of what was in that ballot box; that is what I want to know.—A. I say I can't state.

Q. Very well.—A. There was so much stuff—I know there was a lot of other things in there that had not been mentioned.

Q. What else was in there that has not been mentioned?—A. Ink and pencils and instruction ballots; and there was amendments that had not been used, and little rolls that evidently were ballots that had been counted and tied up and marks made on the back of them.

Q. Those were packages?—A. They were rolled up.

Q. All right; you go ahead.—A. There was legal cap and scratch figures, and waste paper, I will call it.

Q. Where was all that stuff; in the bottom?—A. Yes, sir.

Q. This box, I understood you to say, was full?—A. Yes, sir; practically full.

Q. You didn't take all those rolls of ballots out?—A. Me?

Q. I don't care whether you or somebody else; you didn't see them all taken out?—A. They were not all taken out. The only thing I did see taken out was the straight ballots that were marked.

Q. I suppose they laid kind of on the top, did they?—A. No, sir; they were mixed up.

Q. All the straight ballots, whether straights or crooks, any way they kind of laid on the top, didn't they?—A. No, sir; they were all mixed up, all through.

Q. You don't mean they were mixed up all through?—A. They were in rolls, but one package was found clear on the bottom and another in the middle, and they got into it with their hands, like a woman would mix bread.

Q. Kneading bread—got their arms through these rolls and pulled out something?—A. They kind of looked them over as they run across one of those they picked that out and laid it down on a chair.

Q. You could see—withstanding all that the fact that this ballot box was full, you could see all those things in there, could you not?—A. I will take my oath that what I stated was in that box was there.

Q. This memorandum that you say was taken out of that box the second time these inspectors brought that ballot box before the board of county canvassers, did you see that in that box the first time?—A. Myself, personally, I did not see it; that is true.

Q. Now, the first time this ballot box was opened, were you there when it was closed?—A. Yes, sir.

Q. Who closed it?—A. I couldn't tell you.

Q. How was it closed?—A. It was sealed up and locked; locked and sealed.

Q. I understand this ballot box is around here somewhere.—A. I saw one come into the room.

Q. Where is it?—A. It is right over there in the corner.

Q. Can you get it over here where I can get a peek at it?—A. Yes, sir.

Q. Is that the box that is now before you, the ballot box that you have been talking about?—A. As far as I know it is; it is so marked; it was one similar to that; the same size and color and general appearance; I have no question but this is the same one, but it could be changed and I would not know it.

Q. Is it sealed now?—A. It is.

Q. This ballot box that is marked "Second ward, second precinct." you think is the ballot box we are talking about, do you?—A. I think so.

Q. You live in Battle Creek?—A. Yes, sir.

Q. That ballot box is about how long? It is a square box or rectangular in shape?—A. I think it is about 18 inches or 20 inches long and about 14 inches wide.

Q. Rectangular in shape?—A. Yes, sir.

Q. A tin box?—A. Yes, sir.

Q. Right opposite in here—look at it—there is a slot there about 3 inches long that they put the ballots in?—A. Well, I think so; about 3 inches.

Q. Nearly one-half inch wide that slot is?—A. About.

Q. How did the ballots get into that box, do you know?—A. I can tell you the construction of the lid; there is a slide on the under side of the opening.

Q. You saw that when it was open?—A. I wouldn't say that I observed this particular box in that way, but I have worked with one and acted as inspector on the board in Battle Creek and I will say that slide is locked on the inside, but still can be opened to get the ballots in.

Q. You can push that slide with a knife, now, can't you?—A. No, sir; it is not locked on the inside.

Q. How is it locked?—A. With a padlock.

Q. You didn't observe when it was open before the board of county canvassers to tell how it was locked?—A. No, sir.

Q. You don't know now how it was locked?—A. No, sir.

Q. As a matter of fact, there is nothing on that seal over that ballot box now to prevent anybody getting into that slot where the ballots are supposed to be put through when they are put through, is there?—A. There is a slide, a guard, underneath.

Q. I am talking about the slot that is open on the outside of the box—there is nothing to prevent me from getting right into that slot, is there?—A. I think so.

Q. Come here and see. I can lift that leather strap and put my lead pencil in the slot.—A. Yes, sir.

Q. As a matter of fact, all the seal that has been there, as far as putting that strip over the slot is concerned, does not amount to anything this minute, does it, so far as the outside sealing goes?—A. No, sir; it don't amount to anything.

Q. Not a thing?—A. No, sir; only to comply with the statute, I suppose.

By Mr. MAYNARD:

Q. You can't open the lid without breaking the seal?—A. No, sir.

By Mr. ADAMS:

Q. As far as that ballot box is concerned now, the leather strip put over that slot might just as well not be on there; isn't that true—as far as preventing any tampering with the ballot box?—A. I will answer that by saying—

(Last question read.)

A. Shall I answer it by yes or no?

Q. By both.—A. Yes, sir.

Q. You answer by both?—A. Yes, sir.

Q. You answer both yes and no?—A. Yes, sir.

Q. Well, this strap can be lifted right up now this minute at least 4 inches above the entire slot through which the ballots go?—A. Not 4 inches.

Q. Three inches?—A. Not 3 inches.

Q. I can pull the leather, which is almost entirely free, from that slot, can't I?—A. You can.

Q. There would be nothing to prevent me now from putting a ballot in there, would there?—A. Nothing to prevent you if you could get the bottom slide open; nothing whatever.

Q. So far as the seal on the outside of the box is concerned over the slot, it doesn't amount to anything, does it, in the way of preventing anybody from getting into that box?—A. That particular phase, it does not; no, sir.

Q. Now, when that ballot box was before the board of county canvassers the first time, when they got through with it what was done with the box? It was closed, was it?—A. Yes, sir; closed and sealed up and turned over to—

Q. Who sealed it?—A. I think the chairman of the board or one of the inspectors and the county clerk; all had a hand in it.

Q. The seal does not prevent you from unlocking the lock outside?—A. No, sir.

Q. If you had a key to unlock it?—A. No, sir.

Q. The box is just as easy to have a key inserted in it now with the sealing over that box as if the sealing was not there?—A. Correct.

Q. It doesn't seal the lock at all?—A. No, sir.

Q. Not a bit?—A. Not at all.

Q. It doesn't seal the slot?—A. No, sir; but it prevents opening it without breaking the seal.

Q. Well, as a matter of fact, who sealed that ballot box the first time?—A. I think three of us had a hand in it; I think I went down and got the sealing wax.

Q. Who locked the padlock?—A. I couldn't tell you.

Q. It was one of the inspectors, I suppose?—A. I think so.

Q. You are pretty sure about that?—A. Yes, sir.

Q. One of the board of inspectors of the second precinct of the second ward of the city of Battle Creek locked that padlock the first time the box was locked before the board of county canvassers, according to your recollection?—A. Yes, sir; in the presence of the chairman and the members present.

Q. One of the inspectors or some of the inspectors?—A. There were but two present the first time.

Q. How many did you have in that ward, do you know?—A. We had three inspectors.

Q. Some one or ones of the inspectors, as a matter of fact, put whatever sealing was put on there the first time before the board of county canvassers with your assistance?—A. Yes, sir; I think so.

Q. That is the way the sealing was done?—A. Yes, sir.

Q. The second time when that box was brought before the board of county canvassers who unlocked it?—A. Thomas Thorne, the city recorder.

Q. He actually did the act of unlocking it?—A. Yes, sir.

Q. He inserted the key into the lock?—A. Yes, sir.

Q. Where did he get the key, do you know? Did one of the inspectors hand it to him?—A. No, sir; he had a key.

Q. And unlocked the lock?—A. Yes, sir.

Q. The seal was broken—whatever seal was over it?—A. Yes, sir.

Q. If any?—A. Yes, sir.

Q. And the box was opened?—A. Yes, sir.

Q. That time who locked it after they got through with it?—A. I think Mr. Thorne locked it, and Mr. Schneider and myself and Mr. Thorne took part in sealing it. I think I went down and got the sealing wax the second time.

Q. What seal was used, what stamp was put on there in the sealing wax that you put on when you sealed it up at that time?—A. Mr. Thorne brought over a seal with him.

Q. Was it put on?—A. Yes, sir.

Q. Who put it on?—A. Mr. Thorne.

Q. Was it sealed the second time when it was before the board of county canvassers when they got through with it, sealed up after that just as it is sealed now?—A. As far as I know, in general appearance, it was. It seems to me it was tied up tighter than that.

Q. It is loose now?—A. I think so; I think it was tied up tighter in a bow knot.

Q. There is nothing to prevent now, if you had a key to that lock, from opening that and raising the lid up, is there, enough to put a ballot in the box? Look at it before you answer that question.—A. The lid could be raised.

Q. They could loosen the string and the slack there is on the so-called seal that is on this box you could get that lock out of there and raise that lid to that ballot box up enough to get inside of it, couldn't you?—A. You could not.

Q. You could not?—A. No, sir; you could only raise the lid not to exceed three-fourths of an inch.

Q. You could raise it enough probably to slide that stick in?—A. No, sir; it has a flaring edge of very nearly three-fourths of an inch.

Q. Now, I will slip my lead pencil in; it is sticking in there now, isn't it?—A. The point toward the top of the box.

Q. Well, take the other end of it; it is now?—A. That end of the pencil point is under the lid, but not inside.

Q. To be perfectly fair about it, in the shape that ballot box is in now, it is not safe is it? It is not in such shape it could prevent tampering with or slipping something in there; papers could be slipped in that box this minute without interfering with the seal or unlocking it?—A. Oh, I think if a man should attempt to slip a paper inside of that box in some way, shape, or manner he could slip a paper in there.

Q. You could slip one in there, could you not?—A. If I had a ballot I could slip it in as well as any other piece of paper.

Q. A ballot when folded would be different than an ordinary sheet of paper?—A. I didn't say the size of the ballot.

Q. You can see that there is a space as I lift this lid up. Now that ballot you could get over the edge of this lid this minute?—A. I think a person if he attempted to put in a ballot or sheet of paper could slip it in, in the condition that box is in at the present time, as far as that is concerned.

Q. Such a sheet of paper as that is? So that after you had it there before the board of county canvassers on the 19th day of November, 1912, when the inspectors brought that ballot box over before the board of county canvassers, it could have been slipped in there if that box was in just that condition then?—A. There is no question about that; I would not say but what a man could do it.

Q. Three inspectors were present the second time?—A. Yes, sir.

Q. Before the board of county canvassers?—A. Yes, sir.

Q. The two Mr. Christians and Mr. Wilson, I understood you to say?—
A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Witness, taking the top of this box, I wish you would describe so as to get it on the record, the way in which the slot is made in the top of the box; it has a hopper around it.—A. The slot in the center of the box, in my judgment, is about 3 inches long, maybe a trifle over and about half an inch in width with a hopper of about 1 inch in height, flaring larger at the top than at the bottom. I should judge before it was jammed up it would be in the neighborhood of an inch and three-quarters across the top and a half inch at the bottom.

Q. I understood you about 1 inch in height.—A. With a tin slide underneath, now closed.

Q. When Judge Adams, counsel for the contestant, called your attention to the fact that he had put his pencil in the slide where they voted the tickets, where did that pencil lie?—A. It laid in the hopper.

Q. On the top?—A. In the hopper on the top of the tin which closed it.

Q. Is there any opening there through into the box?—A. No, sir.

Q. Is there any way by which a person could put anything through from the outside into that box without opening the lid and pulling the slide out from under this hopper?—A. No, sir.

Q. Witness, what effect does the seal have by which this box is sealed; is it possible to raise it up without breaking that seal?—A. It prevents the opening of the lid of the box without breaking the seal.

Q. Counsel for the contestant asked you if it would now be possible to take a paper and work it up over the edge under this lid and get it into that box. Would it be possible for a person to do that without the paper itself showing just how it had been injected into that box, do you think?—A. I think if a man attempted to put a paper in the box it would be impossible for him to put it in unless it showed some form of crumpling or creases or something of that kind, showing it would have to be worked through.

Q. Would it be possible for him to open that box without disturbing the seal or disturbing any one of the rolls you saw in the box?—A. That would be utterly impossible.

Q. Could he roll up and insert it into that box without destroying—breaking the seal?—A. No, sir.

Q. You saw this paper, did you, that you mentioned as a memorandum that one of the members of the board of election inspectors examined, and from which corrections were made; did you see that memorandum?—A. I think I did; yes, sir.

Q. In your opinion would it have been impossible to insert that paper into that box and leave it in the appearance it was in when they found it when that box was opened, and as it came before the board of county canvassers?—
A. I don't think it would be possible; I would like to try it now and see.

(Whereupon the hearing was adjourned until 1 o'clock p. m., Friday, April 4, 1913.)

RAY E. HART was recalled for further cross-examination.

By Mr. ADAMS:

Q. I understood you to say you couldn't put anything into that box except through the hole in the hopper?—A. You misunderstood me.

Q. Did you mean to say that?—A. I didn't say that.

Q. You say you didn't say that?—A. Yes, sir.

Q. If you said it, you didn't mean to say it, did you?—A. I don't think I said it; if I did say it, I didn't mean to say it.

Q. As that ballot box is now, the lid could be raised enough so a paper could be slipped into that box?—A. As I said before, I think that tin box lid could be sprung open far enough possibly to slip in a paper; I think that is true; it could be worked in.

Q. You stated this morning in giving the dimensions that the dimensions of the box were approximately what?—A. I think about 20 inches long and probably 14 inches wide and about 12 inches high.

Q. Now, the lid in which this slot is has been jammed in, hasn't it—jammed down in there?—A. Yes, sir; the lid is bent in.

Q. Considerably?—A. To quite an extent.

Q. Right over the hole, over the slot, over the edges of the lid; how far is it down to the lid itself?—A. I don't get the question.

Q. How much is it bent in; would you say?—A. Over what particular part?

Q. Over the edges of the lid.—A. The principal part of the lid, I would say, there is a depression or bending down over 1½ inches at its maximum depth.

Q. And the lid was about in the same shape the first time it was brought over before the board of county canvassers?—A. I couldn't say as to that.

Q. Your recollection—you saw it, didn't you?—A. I have no recollection as to just the condition of that lid; I paid no attention to it.

Q. The second time it was brought over was the lid in about the same condition it is in now?—A. I have no more recollection than I have of the first time.

Q. Does it look any different to you now than it did then?—A. No, sir; after my attention has been challenged to it now, I couldn't tell you the condition it was in.

Q. It does not look any different to you at this time?—A. No, sir; it does not look any different to me now.

Redirect examination by Mr. MAYNARD:

Q. That is, you don't remember how it looked when it was here before?—A. I do not.

Q. Your attention was not challenged to it then?—A. No, sir.

Q. Are you able to say it is in the same condition now it was when you first saw it?—A. The general condition; do you mean as to being jammed?

Q. Yes; as to being jammed, and so on.—A. I don't know anything about it; candidly I don't know.

Q. What is the appearance of this jam in the top, whether done with blows or how; what is the appearance of it?—A. The entire lid is crushed down; that one edge which was ridged is bent down; I should say it was by means of blows, if my opinion is worth anything; it could be done in various ways, probably.

Q. With the box in the condition it is now in, would you say the lid could be raised without disturbing the seal in front?—A. That lid could be raised about one-half an inch, taking out the slack.

Q. I mean raised up so you could get inside the box?—A. No, sir; not without disturbing the seal.

Q. How is the lid fastened down?—A. There is a staple from which there is a loop, a steel loop or hasp, and through this padlock and from that padlock a leather strip tied with a string to the box and sealed.

Q. I will ask you if in your opinion it would be possible to open that box and empty the rolls of ballots you saw in the box without destroying the seal in front?—A. No, sir; that would not be possible.

Recross-examination by Mr. ADAMS:

Q. These figures that you state one of the inspectors used the second time when the ballot box was before the board of county canvassers were the figures that were on the sheet of paper?—A. Yes, sir.

Q. A single sheet of paper?—A. Yes, sir; a single sheet.

Q. Such a sheet of paper as that was on which those figures were, which sheet of paper and the figures on it were used in making some changes of these election returns, could be put into the ballot box this minute without unlocking it or breaking the seal, could it not?—A. I don't know; I think so; I think it could be, but it would show some evidence of being put in, I think.

FRED L. CHRISTIAN, being first sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Christian, where do you reside?—A. Battle Creek.

Q. What is your age?—A. Thirty-two.

Q. What is your occupation?—A. I am a bank teller.

Q. What bank?—A. Old National Bank.

Q. Where?—A. Battle Creek.

Q. The city of Battle Creek, Mich.?—A. Yes, sir.

Q. Were you present at the general election held on the 5th day of November, 1912, in the second ward of the second precinct of the city of Battle Creek, Mich.?—A. Yes, sir; I was.

Q. Did you have any official connection with the election board? If so, what?—A. I was chairman of the board.

Q. What time did you begin the election that day?—A. Seven o'clock.

Q. Were you present at the election during the day?—A. Yes, sir.

Q. Were you present when they counted up?—A. Yes, sir.

Q. Witness, have you heard the testimony of the witness Ray Hart, who preceded you?—A. I heard the most of it.

Q. Were you summoned with the balance of the board of inspectors of that precinct to come before the board of county canvassers on the 19th day of November last?—A. That was the second time I was there.

Q. Do you know of the board of inspectors coming before the board of county canvassers previous to the time you came?—A. I knew of it; yes, sir.

Q. How did you come to come here the second time?—A. Why, by subpoena, to appear before the canvassing board.

Q. Did you bring this ballot box with you when you came before the board?—A. Mr. Thorne, recorder of the city of Battle Creek, and myself brought this box.

Q. Was the box opened here?—A. It was.

Q. What did you do?—A. Mr. Schneider—I think he was chairman of the canvassing board—and Mr. Thorne, the custodian of the box, opened it before the canvassing board and the representatives of both parties concerned and the decision of the board was—

Mr. ADAMS. Hold on about that decision. I object to the witness telling what the decision was; the decision of the board has already been given by the board and the record is conclusive, and it is hearsay and incompetent.

A. (Continuing.) The board decided that if we could not in any way correct those books without molesting any of the ballots or things in the box of that kind that it would be the proper thing to do and asked us if we could do that and I told them we could. They gave us a certain length of time to do it, in which time we made the corrections.

Q. What was that made from?—A. That was made from a memorandum which I made on election day.

Q. Under what circumstances did you make that memorandum?—A. In working in the bank it is customary always to balance everything at night, and when we had our ballots all counted I said to the parties, "Now, I want to put the number"—

Mr. ADAMS. I object to the conversation as hearsay and incompetent.

A. (continuing). So in that way I made the memorandum.

Q. What did you make it with?—A. I used a blue pencil that we had to mark ballots with when they came in to vote, on a sheet of paper.

Q. What kind of a sheet of paper?—A. If I remember correctly it was foolscap; it was a plain white sheet of paper, on the back of which I wrote.

Q. What did you write?—A. I wrote down all the straight ballots, split ballots of the different parties who voted, to see that the totals were correct with the number of ballots cast; also that the five or six ballots put on one side that were not correct.

Q. Did you make that personally yourself?—A. Yes, sir; I did.

Q. What did you do with it when you got it made?—A. It was placed in the ballot box with all the other things before it was sealed.

Q. When they opened the ballot box there what did you find?—A. I found everything as good as it could possibly be; as it was when I left it on election night before sealing the box.

Q. Did you find that memorandum?—A. Yes, sir.

Q. Do you know it was the same one you made?—A. I know it was.

Q. From that what did you do?—A. We made the corrections and the necessary corrections in the books.

Q. In the returns?—A. Yes, sir; in the returns.

Q. Can you tell what those returns were; what those corrections were, I mean?—A. Adding the straight votes to the different parties concerned, to the split votes in order to make a total.

Q. Your original books that you had the tallies on here, what did they omit?—A. They omitted the straight votes.

Q. For each party?—A. For each party.

Q. When you first counted the ballots on election night, what did you do with the straight ballots?—A. We rolled each party's ballots by themselves and tied a string around them and marked them.

Q. On the outside?—A. So many ballots, straight ballots for each party, whatever the party was.

Q. I show you the returns, the book and page, on the cover of Exhibit 47, and ask you if that is the return you made to the election board on the 19th of November last?—A. I do.

Q. Is it or not; I don't know whether that is responsive or not?—A. It is the one sworn to here before the canvassing board.

Q. On the opposite page—I will withdraw that, you were not here.—A. No, sir; I was sick at that time.

Q. I will show you the return on Exhibit 43 on the last page of the cover, inside of the cover, and ask you if that is the return you made to the board at that time?—A. It is.

STARR K. CHURCH, recalled for further cross-examination by Mr. Adams, testified as follows:

Q. Doctor Church, you stated that J. Hatch was the challenger for the Progressive Party.—A. Yes, sir.

Q. You stated that he went into the booth in one instance?—A. Yes; just one.

Q. Was that with the old man or the younger man that had instructions there that day?—A. I am pretty certain it was the older man.

Q. Mr. Simmons went in at the time as inspector there of that board?—A. That is my idea.

Q. And did the marking for the man?—A. Yes, sir.

Q. Did you hear Mr. Hatch say anything while in the booth?—A. No, sir; I don't remember of hearing him say a word.

Q. You just stood there and saw what was going on?—A. Yes, sir.

Q. That is all Mr. Hatch did?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. Now, you saw him but you don't know what he was marking, you don't know what he was doing?—A. He was in there, I know that.

Q. Was he a candidate for office?—A. Yes, sir.

Q. He was one of the candidates running for office on that ticket?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. Mr. Hatch lives in Marshall, does he?—A. Yes, sir.

Q. And Mr. Simmons lived here?—A. Yes, sir.

Q. Who was the other member of that board?—A. Mr. Warren.

Q. Does he live here?—A. Yes, sir.

Q. All lived at Marshall, the second ward of this city?—A. Yes, sir.

Q. Also Mr. Hatch, he lives right here?—A. Yes, sir.

Mr. MAYNARD. I object to all this as incompetent and immaterial.

FRED L. CHRISTIAN, recalled, testified further in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Witness, I turn to the contestant's Exhibit No. 43, on page 7, opposite the candidate's name, John M. C. Smith, candidate for Congress, opposite the name of John M. C. Smith I see certain figures, what are those figures; what does that 31 represent?—A. That 31 represents split ballots.

Q. Are there any tallies opposite John M. C. Smith's name; if so, how many?—A. Do you mean the red figures?

Q. No; the tallies.

Mr. ADAMS. You got the wrong exhibit.

Q. I show you Exhibit 42. On page 12, opposite the name of John M. C. Smith, do you see any tallies there?—A. Yes, sir.

Q. How many?—A. Thirty-one.

Q. What do they represent?—A. The split votes.

Q. Are they set down opposite his name, the 31?—A. Yes, sir.

Q. What other figures do you find besides the 31?—A. Sixty-six.

Q. What does that represent?—A. The straight votes.

Q. Were there that many straight votes for John M. C. Smith?—A. There were; yes, sir.

Q. Add together, 31 and 66 make how many?—A. Ninety-seven.

Q. Did John M. C. Smith receive that many votes at that precinct that day?—A. Yes, sir; he did.

Q. Take the name of Claude S. Carney; are there any tallies opposite his name?—A. Yes, sir.

Q. How many?—A. Twenty-three.

Q. Were those recorded there?—A. Yes, sir.

Q. Then what other figures besides that?—A. Thirty-eight.

Q. What does that represent?—A. The straight votes for Claude S. Carney.

Q. Is that all he received?—A. The 23.

Q. Of the straight votes?—A. Yes, sir.

Q. The split votes, how many?—A. Sixty-one.

Q. Was that recorded for him?—A. Yes, sir.

Q. Is that all that he received in the second precinct of the second ward of Battle Creek at that election?—A. Yes, sir.

Q. For Congress?—A. Yes, sir.

Q. Cast your eyes on that ballot box. Do you see the dilapidated condition of the box?—A. Yes, sir.

Q. Was that so when you last saw it before this time?—A. No, sir.

Q. Was it so when you brought it here before the board the other time?—A. No, sir.

Q. Do you know how this became in that condition?—A. Mr. Thorne said this morning—

Mr. ADAMS. I object to that.

A. I don't know personally.

Q. Now, witness, what is the difference now in its appearance from what it was when you saw it?—A. The top has been bent in.

Q. Sagged in?—A. Sagged in.

Q. Now, when you were called upon to make this correction at the time you appeared before the board, did they allow you to have any assistance from the ballots which had been marked by you and rolled up and deposited in the box?—A. They didn't allow us to use the ballots at all.

Q. How did you make your correction?—A. By the memorandum.

Q. And that alone?—A. And that alone.

Q. How could you have made that correction by the memorandum alone? Did the board of county canvassers make any comparison between your new figures and what you had given them on the 13th?—A. They noticed that the red figures which we made were made the same.

Mr. ADAMS. I move to strike out the answer. It is hearsay and incompetent and a conclusion of the witness.

Q. What did they say to you about it?

Mr. ADAMS. I object to what the board said to him, or any member of the board, as incompetent and hearsay.

A. They said they were the same as they found them on their previous meeting.

Q. Did you compare them yourself afterwards or at any time?—A. I don't think I did. I am sure I did not.

Q. The figures you made from your memorandum you made on the returns on the 19th—you and the rest of the board?—A. Yes, sir.

Q. And you never compared them?—A. I didn't compare them.

Q. After you had made this correction what was done with the memorandum that you used at that time?—A. It was placed back in the box.

Q. As far as you know personally what has become of that memorandum?—A. It is still in the box.

Q. If you were to see it, could you recognize it as to whether it is the one you made or not?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. You didn't see these red figures the second time you were before the board of county canvassers?—A. I was not there the second time—I was there the second time.

Q. You only went before the board of county canvassers at this November, 1912, election once?—A. Yes, sir.

Q. That was on what date?—A. The 19th of November.

Q. You didn't look these figures over at that time in Exhibit 43; that is, the red-ink figures?—A. I think I saw those red-ink figures. I am sure I did.

Q. I understood you to say that you didn't compare the figures to see whether they were correct or not. You wrote them in the book?—A. I didn't write the red ones; no, sir.

Q. But you saw that writing?—A. No, sir.

Q. You didn't compare any figures with the red-ink figures, did you?—A. I think you will find—in my writing I think the figures——

Q. Wait a minute.—A. I am quite sure we did.

Q. Did you?—A. Yes, sir.

Q. What figures did you compare with the red-ink figures?—A. The figures I made—the memorandum with the red figures there.

Q. What do you mean by making a memorandum?—A. The one I wrote on election night that was in the ballot box.

Q. You were chairman of that board?—A. Yes, sir.

Q. You are teller in the national bank there?—A. Yes, sir.

Q. At Battle Creek?—A. Yes, sir.

Q. You were teller in the National Bank of Battle Creek before November 5, 1912?—A. Yes, sir.

Q. And had been teller of the National Bank of Battle Creek how long before November 5, 1912?—A. About five years and a half.

Q. You are how old?—A. I am 32.

Q. What did you do in assisting in counting the ballots November 5, 1912, at night on that election board that you remember of?—A. I counted the ballots.

Q. What did you do?—A. I counted ballots.

Q. What did you do in the way of counting ballots? Tell us what you did.—A. Why, we first went through the ballots.

Q. What did you do—what part of it did you do?—A. I went through the ballots and picked out the straight ballots.

Q. You did that?—A. I didn't do it all; I and the other inspectors did it.

Q. You did part of it and somebody else did part of it?—A. We all did part of it, and when we had them sorted out—the straight ballots—I counted them and rolled them and after the other had counted them marked them on the outside.

Q. Who marked them on the outside?—A. I did.

Q. Those marks were on the outside of those ballots, were they, when you came here before the board?—A. Yes, sir.

Q. That is before the board of county canvassers?—A. Yes, sir.

Q. On the 19th day of November?—A. Yes, sir.

Q. All right. Now, you didn't count on that election board—you didn't count the splits, did you?—A. I counted my share of them.

Q. You counted your share of them?—A. Yes, sir.

Q. And kept tally of them?—A. And kept tally of them.

Q. What did you keep that on?—A. On a record.

Q. Did you have any clerks of that election?—A. Yes, sir.

Q. Who were they?—A. Mr. Gillis and Mr. Clare.

Q. Didn't they keep the tallies as the voters were called off?—A. Yes, sir.

Q. You didn't, did you?—A. I kept track of everything.

Q. Where did you keep it?—A. On a piece of paper.

Q. You were reading them off, were you not?—A. Yes, sir; read them off and took them down at the same time.

Q. You read them off and took them down at the same time?—A. Yes, sir.

Q. Do you want to swear on your oath that is what you did?—A. Yes, sir.

Q. Where is the paper on which you kept the tallies as you called them off?—A. I don't just know whether in there or where it is.

Q. If it is not in the ballot box, why didn't you put it in?—A. I don't know; everything was put in there, scraps and all.

Q. If you kept any such tally as that you put it in the tally box?—A. Undoubtedly.

Q. Those ballots were pretty good size ballots, about 18 inches long?—A. I don't remember the dimensions; quite a large ballot.

Q. Was it not approximately 16 or 18 inches long?—A. I will not state on the dimensions at all.

Q. Have you any notion of distances at all?—A. I don't know.

Q. Was it more than 6 inches?—A. Yes, sir.

Q. Was it more than a foot long?—A. Yes, sir.

Q. More than a foot wide, was it not?—A. Yes, sir.

Q. It was a pretty big ballot?—A. Yes, sir.

Q. I suppose you, as one of the inspectors of that election, held that ballot up and called off the names when you were reading the splits? What you called for John M. C. Smith?—A. Yes, sir.

Q. And Claude S. Carney?—A. Yes, sir.

- Q. And for every other fellow who had a vote on that particular ballot?—
A. Yes, sir.
- Q. Stood up and did it?—A. Yes, sir.
- Q. Do you mean to say when you were calling off those split ballots that you also kept tally of every man who got a vote?—A. I called——
- Q. Hold on a minute, you personally I am talking about now.—A. I didn't call them and set them down at the same time.
- Q. Then, when you were calling off the names of those who got a vote on the split ballots you did not keep track of the tally at the same time you were calling off or reading off the ballots?—A. No, sir.
- Q. Now, did you call off all the splits?—A. I will not say I did.
- Q. Don't you remember now whether you did or not?—A. I am sure I did not.
- Q. Did you call off more than half of them?—A. Thereabouts.
- Q. You say thereabouts; do you mean more than half of them?—A. About half.
- Q. Who called off the other half?—A. One of the inspectors.
- Q. When the other inspector was calling off some of those split ballots who kept the tally?—A. I did.
- Q. What did you keep it on?—A. On a paper.
- Q. Did you keep it on a tally-sheet book?—A. I think the marks are in the tally——
- Q. Did you keep it on a tally-sheet book?—A. I did not.
- Q. I want to know whether you want to say when you kept the tally you kept the tally on a tally-sheet book?—A. No, sir.
- Q. Did you keep any tallies on a tally-sheet book?—A. I did not.
- Q. When you were tallying there on that election day?—A. No, sir.
- Q. What kind of a piece of paper did you tally on when you kept the tally?—
A. It might have been——
- Q. I don't care what it might have been; I want to know what it was?—
A. A piece of paper; a paper that was supplied by the city council for any kind of scratch work on—work of that kind that was necessary.
- Q. Did you write down on that sheet of paper the names of the different candidates on that ballot?—A. That—I couldn't swear whether I wrote them down there or not.
- Q. I want to know, did you not, when you began keeping the tally on that sheet of paper, write down on that sheet of paper the name of every candidate there was on that ballot that was voted for at that election, November 5, 1912?—A. I couldn't say that I did.
- Q. Did you or didn't you?—A. I don't remember.
- Q. You didn't, did you?—A. We sometimes use——
- Q. I don't care about sometimes; now we are talking about a specific thing, and don't get away from it; let us keep to that. Now, then, I want to get to that paper you were keeping tally on. Keep your mind on that paper; that is the only thing I am going to talk about for a little while. How big was that piece of paper you were keeping tally on that night?—A. I don't know.
- Q. Can't you give us any sort of an idea?—A. No, sir.
- Q. You can't tell here now on this record that is going down to Congress how big a sheet of paper that was that you were keeping tally on that night?—
A. No, sir.
- Q. You are a teller in a bank down there?—A. Yes, sir.
- Q. Was it a foot square?—A. I don't know.
- Q. Maybe it was not square at all; was it a foot one way?—A. I don't know.
- Q. You don't know that?—A. No, sir.
- Q. Was it 2 feet one way?—A. I don't know.
- Q. Did you have any names written on it?—A. I had names on it.
- Q. Who wrote the names on it?—A. Whether written or printed I will not say.
- Q. You don't remember that?—A. No, sir.
- Q. If they were written on, who wrote them on?—A. Myself or the fellow who was calling back did.
- Q. Did he use that paper you kept tally on, too?—A. The fellow who I checked back with also used that paper.
- Q. Did he put any tallies on it?—A. I don't remember in this particular case whether he checked back what I had put down or whether he put down new tallies of his own.

Q. You had a tally sheet book furnished by the county clerk of the county of Calhoun in that very precinct—your board had that day, didn't you, two of them, on which to keep a tally of the split votes?—A. Yes, sir.

Q. Didn't you keep the tallies on there?—A. Yes, sir.

Q. Have you now the tallies on this tally sheet book furnished there to you that day for that very purpose; if you had that tally sheet book there why did you use a sheet of paper to keep them on?—A. The clerks used the tally sheets.

Q. Why did you keep a tally at all; you were not the tally clerk?—A. Because the two clerks could not get through with the work in a reasonable length of time.

Q. What time did you get through counting the ballots that day?—A. About 10.30.

Q. Didn't the clerks of that election that were appointed there, the regular legal clerks of the board, didn't they keep a tally of the ballots, splits and straights that were counted there and called off that day?—A. Yes, sir.

Q. As they were called off?—A. Yes, sir.

Q. Now, if they kept them all as they were called off then what was the necessity of you keeping them on a sheet of paper?

Mr. MAYNARD. I want to object to this as incompetent and immaterial, and idle for anyone to ask a question of that kind; the question is whether he made a mistake or not, and that does not appear.

Q. Now, I understand you to say that the tally clerks of the election kept a tally of the ballots that were called off or read off?—A. Yes, sir.

Q. All the time from the beginning of the count until you got through?—A. They kept track and did the checking, sometimes the inspectors and the clerks.

Q. I am talking about the clerks; I don't care about the inspectors. I want to know whether from the time you began counting that night of November 5, 1912, in this precinct in the city of Battle Creek your clerks of election there regularly appointed kept a count of the tallies as they were called off from the beginning to the end—did they or didn't they?—A. They did.

Q. Now, do you mean to be understood that you, by keeping count of them along, expedited it in any way?—A. My impression is that I made afterward this memorandum that has been referred to simply to prove that—

Q. (Interrupting.) I want to know whether you—

Mr. MAYNARD. I ask that the witness be permitted to answer the question.

Q. You can say whether it expedited it or not.—A. Simply we made a memorandum to prove that the number of ballots cast agreed with the total number given to each party.

Mr. ADAMS. I move to strike out the answer as not responsive.

Q. I ask you now whether in the face of your testimony when you say that the clerks there at that election made those tallies on the tally sheet books as the votes were called off to them, and that they did that from the start to the finish, if you in any way expedited the work of that election or hurried it along by you keeping track of any part of those ballots on some other sheet of paper?—A. I didn't hurry it along.

Q. I thought you didn't. Now, then, your name is Fred L. Christian?—A. Fred L.; yes, sir.

Q. I show you Exhibit 43; is that your name there?—A. Yes, sir.

Q. On page 16?—A. Yes, sir.

Q. You signed that certificate, did you?—A. Yes, sir.

Q. You signed it on the night of the 5th of November, 1912, did you?—A. Yes, sir.

Q. When you concluded your election work there on that election board?—A. Yes, sir.

Q. Now, then, you kept that memorandum there; when you got through that night, you checked up with your figures, didn't you?—A. Yes, sir.

Q. To see that it was all right?—A. Yes, sir.

Q. You checked up with the memorandum you made there?—A. No, sir.

Q. What did you keep it for, then?—A. I put it down to prove, as I said before, the correct number of votes were cast and numbered up correctly.

Q. So when you got through there that night with the figures in the tally books, those corresponded and proved the figures there to your board, didn't they?—A. Yes, sir.

Q. When you got all through that night and ready to finish up you looked to see whether the figures they made there in those were alike, didn't you?—A. Yes, sir.

Q. Then why didn't you put them down on this book? Just tell me that. Look on page 7.—A. I had two competent clerks that had done the work before for me when I acted as chairman, and this work was proved up practically, all they had to do was to copy it. I glanced over part of it and found it correct—

Q. What part did you glance over?—A. The number of ballots cast to see that they numbered with our machine. We used a voting machine.

Q. A voting machine?—A. No, sir; we used ballots.

Q. You started to tell us that you used a voting machine, didn't you?—A. No, sir; we did not that day, but to see that the number of ballots cast totaled up to 375, I think.

Q. They totaled that, did they?—A. I think somewhere in that neighborhood.

Q. Did they total 275 or 375?—A. I think 375.

Q. Just exactly? You had just as many votes there that day as you had names on the poll list, did you?—A. No, sir.

Q. You did not?—A. We had five or six votes taken out because they had voted for more than one candidate for the same office, or something else of that kind.

Q. You had just as many votes, though, in the ballot box when you opened it and began counting as you had names on the poll list, didn't you?—A. Yes, sir.

Q. Now, that is not right, is it? You only had 374, didn't you?—A. Something like that.

Q. You had 375 on your poll list, didn't you?—A. Some didn't vote for a certain party.

Q. I don't care who they voted for. Here is Exhibit 45: it says you had 375 votes.—A. Yes, sir.

Q. Three hundred and seventy-five men voted there that day?—A. Yes, sir.

Q. You didn't have 375 voters on your poll book, did you?—A. We had more than that.

Q. How many more did you have?—A. I don't know.

Q. You only had 374, didn't you?—A. I don't know.

Q. You don't know?—A. I think we had more than that; we had more than that. We had 375 men vote, as the list shows. Some ballots were taken out, whether they were the national ticket I don't know, I don't remember, or whether it was some bond issue; I know there were some votes that we could not count.

Q. You were teller in a bank and chairman of the election there that day. You didn't look through that book before you signed that certificate, or did you?—A. Certainly I did.

Q. Well, you had your memorandum right there before you and signed that certificate saying that return was correct; why didn't you notice that you didn't have any straight ballots in there?—A. I can't say that I had my memorandum before me at that minute.

Q. I mean to refer to Exhibit 42. Now, then, you looked that through, and you kept a tally and your clerks kept a tally, and you signed that return saying they were correct, didn't you?—A. Yes, sir; sure.

Q. They were not correct, were they?—A. Evidently not.

Q. You discovered afterwards that they were not correct?—A. Yes, sir.

Q. That was the care you gave there to the conduct of the election that day as chairman of the board and teller in a bank there at Battle Creek?—A. Yes, sir.

Q. Now, then, you stated that there were 66 straight ballots in the ballot box when you got through that day for John M. C. Smith?—A. Yes, sir.

Q. You said that there were 38 straight ballots in the ballot box that day, November 5, 1912, when you got through, or your board did, for Claude S. Carney?—A. Yes, sir.

Q. Did you count all the straight ballots for Claude S. Carney?—A. I think I did.

Q. Did you?—A. I will not say right now whether I counted all the straight votes for Claude S. Carney.

Q. Did you count all the straight votes for John M. C. Smith for Representative in Congress?—A. I will not say that I counted all of them.

Q. If you did not, then you do not know positively of your own personal knowledge whether there were 66 straight votes for John M. C. Smith or not in that ballot box that day when you counted, or began counting; do you?—A. We marked 66.

Q. Then you don't know whether there were 68 straight votes in the ballot box—or 66—for John M. C. Smith for Representative in Congress?—A. I know there were.

Q. You didn't count them all?—A. I would not say I did.

Q. Still you know there were?—A. Yes, sir.

Q. You know there were 38 straight ballots in the ballot box for Claude S. Carney for Representative in Congress?—A. Yes, sir.

Q. You didn't count them all?—A. I will not say whether I did or not.

Q. You counted one-half of the split ballots, you say?—A. I didn't say I counted half; I said approximately. I think I counted in the neighborhood of one-half.

Q. You don't know how many there were of your own knowledge; you don't know how many there were for John M. C. Smith—split ballots?—A. I couldn't swear to just how many there were for John M. C. Smith.

Q. You don't know how many there were for Claude S. Carney for Representative in Congress—splits—do you?—A. No, sir.

Q. Of your own knowledge?—A. No, sir; I couldn't tell of my own knowledge.

Q. This memorandum you are talking about, you say you put in the ballot box?—A. Yes, sir.

Q. After you used it to make out your returns you thought it was so important that you sent the returns—A. I made it to prove up the number of ballots.

Q. You didn't use it to prove it, even, did you?—A. Yes, sir.

Q. You didn't prove it, did you?—A. I proved it; yes, sir.

Q. You didn't enter it in your book; you didn't get your book right, did you, after you went to the trouble to keep that memorandum?—A. No, sir.

Q. You sent the returns to your board of county canvassers of Calhoun County that your returns as chairman of the election board were the correct ones, when, as a matter of fact, they were not correct at all, and you didn't use your memorandum to make your returns correct; that is, from the memorandum we are talking about?—A. Not in the book.

Q. You were a Republican, were you not, on the 5th day of November, 1912?—A. I was.

Q. And had been for some time before that?—A. Yes, sir.

Q. There was another gentleman named Christian who was a member of the board; he was a brother of yours?—A. Yes, sir.

Q. He was a Republican, too?—A. He can answer for himself.

Redirect examination by Mr. MAYNARD:

Q. Did you do your best to try to make out those returns for that election and do it in an honest way?—A. Yes, sir.

Q. When you came here what did you find was omitted from those returns?—A. It had been neglected to put down the straight votes.

Q. Of each party?—A. Of each party.

Q. Those had been counted that night of the election, had they?—A. They had been counted and checked and rechecked on election night.

Q. You supposed when you signed it that it contained a statement of the straight votes?—A. Yes, sir.

Q. Was that the first time you ever knew of a clerk making a mistake in entering in a book?—A. On any board of which I was a member I heard about mistakes.

Q. You were not making mistakes to help John M. C. Smith, were you?—A. No, sir.

Recross-examination by Mr. ADAMS:

Q. What you mean is that this is the first time you ever got caught at any mistakes during your work on the election board; is that what you mean?—A. I don't know whether you would dare to ask me that on the outside.

Q. This is the first time your mistakes have been detected, to your knowledge, in the work you have had to do?—A. It is the first time a mistake has ever been known or ever been made.

Q. Made public, you mean?—A. I think if I had made a mistake it would have been made public.

Q. There has been no contest before over any returns you have had anything to do with?—A. No, sir.

Q. They haven't been opened up to examination?—A. I understand all of them were examined.

Q. After you put them in the ballot box?—A. After that change is made.

Q. This is the first time you have known of their going into the ballot box of your work, to see whether the returns you sent in were not in the ballot box corresponded with the vote in the ballot box?—A. When I put the returns in the box, that the board of canvassers examined them to see whether they were correct.

Q. This is the first time the ballot box has been opened and any comparison been made with the returns you made out and sent to the county clerk of any election you have had anything to do with, that you know of?—A. I think they always order a count before the board of county canvassers; this is the first time there has been a contest.

Q. Don't you know that the canvassing board do not open the ballot boxes at all unless there is a contest, and have no legal right to?—A. I don't know.

Q. Didn't you read the election laws of the State of Michigan?—A. I have read parts of them.

Q. Don't you know that is the law?—A. That is not my business.

Q. Do you know that is the law?—A. I don't know as it is the law.

HARRY CHRISTIAN, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. MAYNARD:

Q. What is your given name?—A. Harry Christian.

Q. Where do you reside?—A. Battle Creek, Mich.

Q. What is your occupation?—A. I am a mechanic.

Q. What is your age?—A. I am 34.

Q. Were you present at the voting place at the general election?—A. (Interrupting.) Yes, sir.

Q. (Continuing.) Held on the 5th day of November, 1912, in the second precinct of the second ward of the city of Battle Creek, Mich.?—A. Yes, sir.

Q. Had you any official connection with the election board there?—A. Yes, sir; inspector.

Q. Who were the inspectors at the election there that day?—A. F. L. Christian, Mr. Wilson, and myself.

Q. Were you present when they counted up?—A. Yes, sir.

Q. Did your board make a return of the election?—A. Yes, sir; we did.

Q. I show you the poll book, the statement book, and the tally-sheet book and ask you whether those are the returns?—A. Yes, sir.

Q. Those are the returns from that precinct, are they?—A. Yes, sir.

Q. After you made your returns to the board of county canvassers was your board cited to appear before the board of county canvassers?—A. Yes, sir.

Q. Do you remember the date on which you first came?—A. November 13.

Q. Did you come here twice?—A. Yes, sir.

Q. Are you able to state the dates you came before the board?—A. Yes, sir.

Q. When were they?—A. November 13 and 19, 1912.

Q. When you came before the board on the 13th, who came?—A. I and Mr. Wilson, the other inspector.

Q. Did your brother come with you, the last witness on the stand?—A. No, sir; not in the first place.

Q. Did he come with you the last time?—A. Yes, sir.

Q. The first time, who was present?—A. The board of county canvassers, Mr. Hart, the other inspector, and myself.

Q. Your city clerk or recorder?—A. Not the first time.

Q. Did you bring the ballot box with you?—A. Yes, sir.

Q. Before the board?—A. Yes, sir.

Q. When you arrived here what did they explain to you about those returns?—A. That we were short the straight ballots.

Q. What did you do after you got here?—A. We corrected the books.

Q. Opened the ballot box, do you recollect? Who did?—A. As to that I couldn't state.

Q. Did you bring the key with you?—A. Yes, sir.

Q. Who brought that?—A. I did.

Q. Did you have the seal with you?—A. Yes, sir.

Q. Was the ballot box opened?—A. Yes, sir.

Q. What did you find inside?—A. The ballots and things we placed in there the night of the election.

Q. What did you do to correct your books?—A. We referred to the marks on the outside of the rolls of the straight ballots.

Q. Were the number of straights of each party on the outside of those rolls?—

A. Yes, sir.

Q. And from those did you make your corrections?—A. Yes, sir.

Q. Is that first certificate that I show you in red ink when you signed the returns that day?—A. That was the first time.

Q. On the 13th day of November?—A. Yes, sir.

Q. 1912?—A. Yes, sir; it was.

Q. Did you know what those numbers in red ink on the rolls that you found in the tally books were?—A. Yes, sir.

Q. Were you called before the board of county canvassers the second time?—A. Yes, sir; the second time.

Q. What date was that?—A. The 19th of November, I think.

Q. Who was present with your board then?—A. Fred Christian and myself, and also the recorder, Mr. Thorne.

Q. What did you find in the ballot box that day?—A. We took out of the ballot box a memorandum sheet.

Q. Where did you find it?—A. Down toward the bottom of the box.

Q. What was on top of it?—A. The ballots.

Q. The rolls, you mean?—A. Yes, sir; they were rolled and tied up with a heavy cord.

Q. Did you know this memorandum when you found it—when you saw it?—A. Yes, sir.

Q. What was it?—A. It was a piece of plain, gray paper, marked on with a blue lead pencil that we used in the booths.

Q. From that were you able to make your corrections?—A. Yes, sir.

Q. Did that in any way change the numbers which you had set down from the figures which you found on the back sides of the rolls?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. Who put the figures on the backs of those ballots that were rolled up that you say you used to make those changes in the returns the first time you were before the board of county canvassers?—A. My brother, Fred Christian.

Q. All the figures on the backs of those rolls were in the handwriting of your brother?—A. Yes, sir.

Q. You were one of the inspectors of that election?—A. Yes, sir.

Q. You had some clerks of the election?—A. Yes, sir.

Q. And they were who?—A. Carl Gillis and Archie Clare.

Q. How many clerks did you have?—A. Two.

Q. Who was Fred L. Barber?—A. I believe he was there; yes, sir.

Q. Then you had three clerks?—A. Yes, sir.

Q. Who was Ray Roth?—A. He was enrollment clerk, I think.

Q. They didn't enroll there that day?—A. We did have an extra clerk.

Q. You had two extra clerks, didn't you?—A. Yes, sir.

Q. You change your testimony, and now you say in place of two clerks you had four.

Mr. FRANKHAUSER. I object to the statement that he has changed his testimony.

Q. In place of there being two clerks of that election board that day, as a matter of fact you had four, didn't you?—A. Yes, sir.

Q. One of those clerks was Fred L. Barber and another was R. R. Roth and another A. E. Clare, and the fourth clerk was Carl H. Gillis?—A. Yes, sir.

Q. So you had four clerks assisting that board that day?—A. Yes, sir.

Q. I supposed they clerked, didn't they?—A. Yes, sir.

Q. They had to keep track of the tallies that were called off there for the different candidates, didn't they, when you were counting the votes?—A. Yes, sir.

Q. And were there until you got through counting the ballots?—A. Yes, sir.

Q. That day of November the 5th?—A. Yes, sir.

Q. This memorandum you are talking about, that you found in the ballot box, was that a tally sheet?—A. No, sir.

Q. It was not?—A. It was a piece of paper that we had to make memorandums on.

Q. That was also, you said, in your handwriting?—A. No, sir; my brother's.

Q. Well, he had kept a tally on that sheet that you found, had he, of the split votes?—A. No, sir; that was the balance sheet.

Q. What was there on that balance sheet?—A. All the split votes and straight votes to see what the total was.

Q. For every candidate on the ticket?—A. No, sir; not for every candidate—not on that sheet—for all purposes.

Q. For all purposes?—A. Yes, sir.

Q. What do you mean; the sum total on that memorandum that you took out here before the board of county canvassers, that we have been talking about so much, there was the sum total for all purposes?—A. Yes, sir.

Q. The sum total of what?—A. Of the votes cast.

Q. The sum total of the votes cast?—A. Yes, sir.

Q. For what? Do you mean 375 votes cast?—A. Yes, sir.

Q. That is all there was on there?—A. Yes, sir.

Q. It did not show how many straight votes there were for John M. C. Smith for Congress, did it, on that sheet?—A. Not on that sheet; no, sir.

Q. I am talking about the sheet you used here before the board of county canvassers from which you made your corrections, did not have on that sheet the total straight votes for John M. C. Smith for Representative in Congress: did it?—A. Yes, sir.

Q. It did?—A. Yes, sir.

Q. Did it have the total straight votes for Claude S. Carney for Congress?—A. Yes, sir.

Q. Did it have the total straight votes for secretary of state?—A. Yes, sir.

Q. For governor?—A. Yes, sir.

Q. And electors?—A. I will not say as to that; I think it did.

Q. Did it have the number of straight votes for each elector on the different tickets of the different parties? For each candidate on there?—A. Did it have each candidate?

Q. I mean each elector in each party, on that sheet of paper?—A. I couldn't say as to that.

Q. Did it have on there the straight votes for every candidate for governor?—A. Yes, sir.

Q. Six candidates for governor; you had them all on?—A. Yes, sir.

Q. Did you have the split votes for those six candidates for governor?—A. Yes, sir.

Q. Did it have the straight and split votes for the six candidates for lieutenant governor on each of the tickets?—A. I believe it had.

Q. Did it have the straight votes and the split votes for the six candidates for secretary of state on that sheet of paper?—A. I believe it did.

Q. Did it have the straight and split votes for the six candidates for State treasurer?—A. I think so.

Q. Did it have on that sheet the straight and split votes for the six candidates for auditor general?—A. I think it did.

Q. Did it have on that sheet the straight and split votes for the six candidates for attorney general?—A. I think it did.

Q. Did it have on that same sheet the straight and split votes for the six candidates for commissioner of the State land office?—A. I think so.

Q. Did it have on there the straight and split votes for the five candidates for justices of the supreme court?—A. I think it did.

Q. The straights and splits for the three candidates for the short term—five candidates for the short term?—A. Yes, sir.

Q. Did it have the straights and splits for justices of the supreme court—the three candidates—for the long term?—A. I believe so.

Q. Did it have the straight and split votes for the five candidates for Representative in Congress at large?—A. I believe so.

Q. Did it have the straight and split votes for the four candidates for Representative in Congress?—A. Yes, sir.

Q. Did that memorandum you took out of that box and used for making the change in the figures have the straight and split votes for the four candidates for State senator?—A. I think it did.

Q. Did that memorandum have on it the straight and split votes for the four candidates for representative in the State legislature?—A. I think so.

Q. Now, there were three candidates for judge of probate, four for sheriff, four for county clerk, four for county treasurer, four for register of deeds, three for prosecuting attorney, eight for circuit court commissioners, eight for coroner, four for county surveyor, four for drain commissioner—now, then, as to those men, I ask you whether that memorandum that you took out of that ballot box also had on it the straight and split votes for all those different candidates for the different county offices?—A. Had the totals.

Q. It did have the straights and splits?—A. The total votes.

- Q. The total straights and total splits?—A. Yes, sir.
- Q. It had in separate items the total straights and total splits for each candidate?—A. Yes, sir.
- Q. I mean each candidate—the candidates on these various county tickets?—A. Each party. I believe.
- Q. Each candidate on all the tickets—that would take in all the parties besides the straights and splits that had been cast at the preceinct that day?—A. We didn't have the names on that sheet.
- Q. You didn't have the names?—A. Not on that sheet.
- Q. Didn't you have the names for Representative for Congress on that sheet?—A. Not on that sheet.
- Q. That was on a separate sheet?—A. Yes, sir.
- Q. You only had one sheet here before the board of county canvassers?—A. Yes, sir.
- Q. Did it have the names on that sheet you used?—A. No, sir.
- Q. You used that sheet that did not have the name of a single candidate on to correct your returns, did you?—A. Yes, sir; the total Democratic and total Republican.
- Q. You were a Republican November 5, 1912?—A. I couldn't say that I was.
- Q. You were acting on this board; were you not put on there as a Republican inspector?—A. I might have been. I am not saying I am a Republican.
- Q. I am not asking you what you are now; we are talking about November 5, 1912. You were put on there as a Republican inspector of that board of election?—A. I may have been; I never knew I was put on there as a Republican.
- Q. You were a Republican, were you not, at that time—that election day?—A. No, sir; I couldn't say as to that.
- Q. Were you enrolled as a Republican?—A. I am not.
- Q. Were you enrolled as a Republican for that election—November 5, 1912?—A. I don't believe I am; in fact, I know I am not.
- Q. What were you enrolled as on November 5, 1912?—A. I am not enrolled with any party.
- Q. Not enrolled at all?—A. No, sir.
- Q. Did you vote at that election?—A. I was registered and voted.
- Q. Those figures you used there from this memorandum, when you were before the board of county canvassers the second time for the purpose of attempting to change your election returns, were figures your brother had made?—A. Yes, sir.
- Q. You didn't make them?—A. No, sir.
- Q. You don't have any personal knowledge whether they are correct or not?—A. I do.
- Q. You know they are figures?—A. Yes, sir; I didn't make them; no, sir; but I know they are right, and know what they are.
- Q. You know what they are?—A. Yes, sir.
- Q. Do you know what they are now?—A. Yes, sir.
- Q. You can tell us what they are now, right down the line.—A. Not from memory; no, sir.
- Q. What did you do there that election day in counting?—A. I counted all the ballots or recounted them.
- Q. You counted all the ballots or recounted them?—A. Yes, sir.
- Q. Who read off the ballots?—A. I couldn't say as to that.
- Q. Did you read any off?—A. I did.
- Q. Did your brother read any off?—A. Yes, sir.
- Q. Did the other inspector read any off?—A. I believe he did.
- Q. How many of them did you read off—one-half?—A. I couldn't say as to that.
- Q. Your brother read half or better?—A. I am not saying as to that.
- Q. How many of them would you say the other inspector, Mr. Wilson, read?—A. I don't know as to that.
- Q. Did he read half?—A. I don't believe he did.
- Q. One-third?—A. I will not say.
- Q. Did he read a third?—A. I am not saying.
- Q. Can you say?—A. No, sir.
- Q. You don't know?—A. No, sir; I don't know.
- Q. Approximately, would you say he read a third?—A. I would not say.
- Q. You can't give us any information how many you read?—A. No, sir.
- Q. You sorted out the straights?—A. Yes, sir.

Q. From the splits?—A. Yes, sir; all parties.

Q. Well, did you go over every ballot on which there was a split?—A. Yes, sir; I either counted it or recounted it.

Q. What do you mean that you either counted or recounted? I don't understand what you mean.—A. If they were counted first by one of the inspectors I recounted to see whether it was correct, and the clerk checked.

Q. What did the clerk check over? How did he make his checking?—A. On a piece of paper we had.

Q. Didn't the clerk keep his checks on the tally-sheet book furnished by the county clerk?—A. No, sir.

Q. Don't you know the tallies were entered as they were called off the ballots?—A. No, sir; not as called off the ballots.

Q. When they were read off the ballots when you were counting the splits didn't the clerk who was keeping the talley-sheet book put down a stroke on that book every time a name was called off?—A. No, sir.

Q. They didn't do that?—A. No, sir.

Q. I suppose in keeping these tallies when a ballot was read off there would be a stroke put down for each candidate who got a vote?—A. On a sheet of paper we had.

Q. You had on that sheet of paper each candidate's name?—A. Yes, sir.

Q. Then put a stroke opposite his name?—A. Yes, sir.

Q. Then you would read them over again?—A. Yes, sir.

Q. How could the clerk tell each of those different candidates on there if he simply put down a stroke opposite a candidate's name and another beside that; when you went back to read over, how could he tell where he had that stroke, can you tell me?—A. He had it drawn off in spaces.

Q. He put five in a space?—A. Yes, sir.

Q. You didn't have any paper spaced for keeping this temporary memorandum on, did you?—A. Yes, sir.

Q. That was spaced paper?—A. Yes, sir; we spaced it, I and my brother.

Q. How big spaces did you make?—A. I will not say for that.

Q. Just describe it to me—show me—mark it on a piece of paper, will you?—A. Maybe inch spaces.

Q. Mark the size of the space you and your brother ruled off.—A. Plenty large enough.

Q. What was?—A. The spaces.

Q. I suppose so; that might be a foot or an inch. Mark the size of the spaces you made on that paper.—A. About like that [indicating].

Q. I suppose included between those four lines was about the size spaces you had?—A. Yes, sir; similar.

Q. For five votes?—A. Yes, sir.

Q. On that temporary paper?—A. Yes, sir.

Q. How big a sheet of paper did you have to keep this on?—A. Why, maybe 3 by 4 feet; somewhere in that neighborhood.

Q. Pasted together or was it one sheet?—A. One piece of manila paper.

Q. You kept five strokes in a space that was that wide?—A. Very nearly.

Q. I show you this exhibit on which you made this square that you say you had on that sheet; those squares you made on that sheet you put 5 tally marks in?—A. Yes, sir.

Q. No more than 5?—A. No, sir.

Q. When they started to read off one for John M. C. Smith you went down that tally sheet 40 or 50 names?—A. Yes, sir.

Q. That had to be called off?—A. Yes, sir.

Q. So that in copying that you would mark a tally in the square of that size opposite the name of John M. C. Smith?—A. Yes, sir.

Q. Then, if the governor got a vote on that same ballot you would put it in the square opposite his name?—A. Yes, sir.

Q. Until you got down toward 40 or 50 candidates voted for on that ticket?—A. Yes, sir.

Q. Then you would read it over and the clerk would check back from there?—A. Yes, sir.

Q. Can you tell me how that clerk could possibly remember how many strokes he had in the square opposite each man's name so he could tell whether the tallies he put down that were called off the first time were correct with the call you made? Can you explain that to me how that would be possible?—A. Recounting them; simply when they recounted those—check down and see.

Q. You don't know whether he was checking the tally that was called first or a tally read from some other ballot, do you? How could you tell? Can you tell me how it could be done? There were about a hundred names on the ticket, were there not?—A. I don't know exactly.

Q. Say 96 you had on that ticket, on that big sheet of paper were the names of the men who were voted for that day?—A. Yes, sir.

Q. If there were 150 you had 150 names on that sheet of paper?—A. Yes, sir.

Q. You had a lot of those spaces opposite each man's name of the size of those exhibited here, had you?—A. Yes, sir.

Q. In every space opposite his name you only put five tallies?—A. Yes, sir.

Q. Five strokes?—A. Yes, sir.

Q. You started down with the tally calling off the first man's name who got a vote, and suppose there were 50 men voted for on that ballot, or 40 we will say, you would have to make 40 strokes somewhere on that sheet of paper?—A. Yes, sir.

Q. You would put a stroke opposite the governor, put one stroke opposite that particular governor's name?—A. Yes, sir.

Q. So that down through that ticket until you counted for every vote on that ticket?—A. Yes, sir.

Q. You say the ballot was read?—A. Yes, sir.

Q. The clerk would check back from those ballots, I suppose, to see whether it was correct?—A. Yes, sir.

Q. Will you tell me how he could tell whether it was correct?—A. Yes, sir.

Q. How he would know which stroke to put down the one first read off to him in 40 or 50 different spaces on that ballot?—A. He marked it.

Q. How?—A. With a pencil mark.

Q. Simply put a stroke down?—A. Yes, sir; a count.

Q. Did he mark that stroke in any way?—A. Just a dot.

Q. To show it was dotted?—A. Yes, sir.

Q. You came back here and you read one off for governor and he put a dot to that one vote for governor, how could he tell whether the last one was the one called off that particular ballot or not?—A. Because it was not dotted, was not marked.

Q. Did he dot it when you read it off?—A. When I reread or when he reread it or one or the other reread it.

Q. He was not doing the rereading?—A. One of the inspectors was.

Q. Where is that big sheet?—A. I destroyed it.

Q. I thought you spoke of those papers you used there that day at that election that they were in this ballot box; didn't you put that in the ballot box?—A. No, sir.

Q. Did you tear it up?—A. I burned it up.

Q. That night?—A. Yes, sir.

Q. That was the only original count you had there that day, was it not?—A. Of each individual.

Q. And that you destroyed?—A. Yes, sir.

FRED L. CHRISTIAN, being recalled, testified further, on behalf of the contestee, as follows:

Examined by Mr. MAYNARD:

Q. Where did you prepare that sheet that day last spoken of by you?—A. Well, I have forgotten that.

Q. Explain, if you will, how that tally was kept.—A. On the left-hand side of the sheet I drew a line, allowing a space for each candidate's name; then I drew from that a space, a horizontal space with a faint line running along the center subdividing; then left a space about three-fourths of an inch long for the marks. When I called John M. C. Smith's name for one vote he would put it down and call a mark for John M. C. Smith, and one for Claude S. Carney, call one vote for Claude S. Carney above the faint line, and when they were rechecked or reread I read to him; he put his marks below the faint line similar to that [indicating].

Q. The tally sheet kept in the two places identically checked?—A. Yes, sir.

Q. They had to check up before they were gone over by the clerks when re-read and the tallies were placed below the fine lines?—A. Yes, sir.

Q. When read in the first place the tallies were placed above?—A. Yes, sir.

Q. So the tallies were read twice?—A. Yes, sir; gone over twice.

Q. When the election was finally completed and the count made was there a public declaration made?—A. No, sir.

Q. At that place?—A. No, sir.

Q. Did you make any public announcement?—A. No, sir.

Q. Of the result of the election?—A. No, sir; I was very much surprised when I was notified something was wrong.

Q. You didn't make it then?—A. No, sir.

Q. When this count was made here on this long paper how did the clerks find out what one they put in these books?—A. As the total was set down after each candidate's name a line of that count was marked, then called back from these sheets; was called back to the clerks in some manner and then a mark set down at the time.

Q. Then the announcement of the result was from the clerks?—A. Yes, sir.

Q. Of that election?—A. Yes, sir.

Q. They made that; you heard it?—A. The different clerks or different—one of the inspectors read it to the clerk.

Q. Then the result of this election was read to your clerks, and you supposed was copied in the books, did you, into these books, into these election returns?—A. I supposed it was; yes, sir.

Q. That is where the mistake was made?—A. Yes, sir; this sheet was for the split votes, and the straight votes were all sorted and inspected by two or three of the men and rolled up so they would not be in our way; having so many ballots was why we did that. Then one of the clerks put this down on his book, and they did not disturb the rolls of straight ballots.

Q. Now, that memorandum that you used when you came before the board of county canvassers, when did you make that?—A. The night of the election.

Q. When did you put it in the ballot box?—A. When I put all the other papers in and records.

Q. When?—A. The night of the election.

Q. Did you see it again before you took it out before the board of county canvassers?—A. No, sir.

Q. Is that the one you put in the box on the night of the election?—A. That is the same one I used to make the corrections.

Cross-examination by Mr. ADAMS:

Q. Did you read off to the clerks there that night, say, the split votes?—A. Yes, sir; the split votes.

Q. The straight votes were not read off to the clerks?—A. The straight votes were there before them.

Q. You counted those over when you first took the ballots out and sorted them?—A. Yes, sir.

Q. Then you marked on the back of them and laid them down, laid them aside, didn't you, and went on counting the splits, and when you got through with the splits and with that big sheet, 10 feet or such a matter across it, these big spaces, three-fourths of an inch, or whatever the size was, you called back to the clerks the number of votes, split votes, which each fellow had?—A. Yes, sir.

Q. They didn't put down the straight votes at all for the candidates?—A. No, sir.

Q. Why didn't you call those off?—A. We——

Q. (Interrupting.) You forgot to do that, didn't you?—A. I couldn't swear; I don't know why they didn't put them down.

Q. If you had called them there they were there to put down, but they didn't put down a single one of those straight votes?—A. No, sir.

Q. When you got all through you didn't call off the number of votes that each candidate got?—A. Yes, sir.

Q. How did you do it; you didn't have them on there to call off?—A. I didn't call them from there.

Q. You didn't call them at all?—A. It was not necessary to put down——

Q. (Interrupting.) I don't want to argue this with you. You didn't call off the total votes that every candidate got, did you?—A. No, sir.

Q. Or the total vote that any candidate got?—A. We did of the electors.

Q. Those are the only ones. The electors were the only ones you called off the number of votes they got when you got through with that count?—A. I don't think those were the only ones we called off.

Q. You didn't call off any others at that time, the total votes they got, splits and straights?—A. I wouldn't say I did.

Q. You told the judge you didn't know. Did you mean it or didn't you?—A. I meant what I said.

Q. You meant what you said then?—A. Yes, sir.

Mr. MAYNARD. We will consent that the ballot box be opened up to see whether this paper is there and for a count of the ballots.

Mr. ADAMS. It has been opened by the janitor in the city hall at Battle Creek. If you hadn't opened up the box, if it had been kept inviolate, we would have no objection to it.

W. R. NOYES, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. Mr. Noyes, you are city clerk of the city of Albion, Mich.?—A. Yes, sir.

Q. Albion is in the county of Calhoun?—A. Yes, sir.

Q. Under what law is it operating, what charter?—A. The regular fourth-class charter.

Q. That is, as you understand, it is a city of the fourth class?—A. Yes, sir.

Mr. FRANKHAUSER. I will read this into the record:

"The supervisor and two aldermen of each ward when eligible, and one elector of the ward to be appointed by the council, shall, except as in this act otherwise provided, constitute the board of inspectors of election. If by the reason of the formation of new wards or by a change in the boundaries of existing wards or the creation of more than one election district therein, or for any reason there shall not be a sufficient number of the officers last named in any ward or district to make a board of four inspectors for each election district, it shall be the duty of the council at least one week before the election to appoint a sufficient number of inspectors, who, with the officers above named, if any, residing in the ward or election district shall constitute a board of four inspectors for the ward or district, and if at any election any of the inspectors above provided for shall not be present, or remain in attendance, the electors present may choose, viva voce, such number of electors as, with the inspector or inspectors present, shall constitute a board of four in number, and such electors so chosen shall be inspectors at that election during the continuance thereof. Each inspector of the election shall receive \$2 per day as compensation."

Mr. MAYNARD. That is all in the record once before.

S. W. CULVER, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. Mr. Culver, you reside in the city of Albion?—A. Yes, sir.

Q. You are supervisor of the first ward?—A. Yes, sir; I am.

Q. And was on the 5th day of November last?—A. Yes, sir.

Q. And as such acted as one of the inspectors of election on that day?—A. Yes, sir.

Q. As supervisor you were chairman of the board?—A. Yes, sir.

Q. You acted as chairman that day?—A. I did.

Q. You took the ballots and deposited them in the ballot box?—A. Yes, sir.

Q. Now, during the continuance of that election, were there any voters who asked for assistance in marking their ballots?—A. There always has been.

Q. About how many?—A. I couldn't say exactly, but I remember of two.

Q. Did they receive assistance?—A. They did.

Q. Now, briefly, what was it?—A. John Dewar was the first one. He said that he was unable to mark his ballot; he didn't have his glasses and could not see to read the names.

Q. What was done with him?—A. A Democrat and Republican inspector, one of the justices of the peace went in and saw that his ballot was marked as he wished.

Q. Do you know whether they marked it?—A. I couldn't say; I was not there.

Q. He asked for assistance to mark his ballot?—A. Yes, sir.

Q. Was he sworn before receiving such assistance?—A. He was not.

Q. The next man; what was his name?—A. Mr. Willoughby; there may have been some one between; I don't remember.

Q. But those two you remember?—A. Yes, sir.

Q. What was his trouble?—A. He didn't know whether he wanted to vote for "Teddy" or Roosevelt; that is what he said.

Q. What assistance did he ask for?—A. He asked to have somebody tell him where they were.

Q. Do you know whether his ballot was marked or not?—A. Well, not personally; I was not present.

Q. But he asked for assistance to mark his ballot?—A. Yes, sir.

Q. Was he sworn as to his inability?—A. No, sir.

Q. Was there any oath administered to him or to the other voter or to any other voters there that day; was there any oath administered to them before assistance was rendered?—A. No, sir; I didn't hear any.

Q. Was there any oath administered to any voter that they could not read the English language, or that because of physical disability he could not mark his ballot?—A. No, sir; I didn't hear it, anyway.

Q. Now I suppose when the polls closed at 5 o'clock you began at once to canvass the votes?—A. Yes, sir.

Q. And continued how long?—A. Until we were through.

Q. About what time did you get through?—A. About 10.30.

Q. On the night of the 5th?—A. Yes, sir; I am not positive what time, but about 10.30, I think.

Q. When you quit counting what did you do?—A. Put the ballots and the poll book and statement book and everything that pertained to the election, except the registration book, in the ballot box, and it was locked and sealed.

Q. What did you do with the books that were returned?—A. They were put in the ballot box.

Q. Where was the ballot box sent to?—A. To the council chambers.

Q. Then what did you do after that; you went home?—A. We adjourned and went home.

Q. When did you reassemble?—A. The next morning.

Mr. ADAMS. I object to any testimony from this witness further, except as bearing upon the question of whether any oath was administered to any voters, or any assistance given to any voters in this ward in the city of Albion on this election day, for the reason that there is no allegation whatever in the answer of the contestee claiming any such a state of facts, and as incompetent, irrelevant, and immaterial, and not admissible under the pleadings; and I move to strike out what the witness has testified about what they did, as far as counting the votes is concerned, or what they did that evening in that regard, or the next morning, or any other time.

Mr. MAYNARD. We wish to give notice that our answer will be considered to be amended so as to cover any irregularities we may find in these precincts, as to why the vote should not be counted for the contestant, and we give that notice now. The other side was permitted to amend their notice of contest to cover this class of testimony not covered by it, and we shall apply for permission to make such amendments as will admit this class of testimony and testimony of a like nature. They introduced testimony which the notice of contest in no way warranted.

Mr. ADAMS. I want to have my motion to strike out what he has already testified to, and object for the same reason to any testimony being given from now on on any of these points as far as Albion or any precinct in Albion is concerned.

Q. Where did you meet?—A. At the council chamber.

Q. I am speaking of the board of inspectors.—A. At the council chamber.

Q. What did you do—about what time did you meet the next morning?—A. About 9 o'clock.

Q. On the 6th day of November?—A. Well, the next day after election.

Q. I show you a book, and ask you if that is one of the returns of that election in the first ward of the city of Albion of that election held November 5, 1912?—A. Yes, sir.

Q. Turn to the page where the signatures of the inspectors appear.—A. Yes, sir.

Q. Witness, I show you Exhibit 62; are the signatures on the certificate on the last page the signatures of your board?—A. Yes, sir; they are.

Q. I wish you would read the certificate on the last page of Exhibit 62 into the record.—A. (Reading:) "State of Michigan, county of Calhoun, ss—"

Mr. ADAMS. I object to that being read into the record because it is not covered by the answer.

Mr. FRANKHAUSER. It is understood that you have that objection and that that objection may apply to all this line of testimony as incompetent, irrelevant, and immaterial and not covered by the answer.

A. (Continuing reading:) "We do hereby certify that the foregoing is a correct statement of the votes cast in the first ward of the city of Albion, county of Calhoun, State of Michigan, at the general election held on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the city of Albion, said county and State, this 5th day of November, A. D. 1912.

"S. W. CULVER.

"H. D. KECK.

"F. L. SMITH.

"GEORGE R. CARVER."

Q. As a matter of fact, then, that certificate was signed on November 6?—

A. No, sir.

Q. When was it signed?—A. The night of election.

Q. What did you do the next morning when you met to make out the returns?—A. They were signed the night of the election.

Q. In other words, the names were signed on the last page of that book before any of the returns had been written into the book?—A. Yes, sir; they were signed that night.

Q. This return of the statement of the votes, both those in figures and in words, were written in after the certificate was signed?—A. I think they were; that is, they were partly filled out the night before but they were not completed.

Q. They were written in on the 6th, the words and figures opposite the names of the several candidates for office?—A. Yes, sir; the next day after the election, whatever day that was.

Mr. FRANKHAUSER. Exhibit 62 shows John M. C. Smith 111, and Claude S. Carney 138.

Q. That is correct; I read that correctly?—A. Yes, sir.

Q. Mr. Carney had a plurality of 27 in the first ward of the city of Albion?—A. Yes, sir.

Q. I call your attention to pages 7, 8, 9, and 10; instead of writing in the names of the candidates, how did you place the names in there?—A. They were pasted in.

Q. Where did you get those pasters of those names?—A. From the instruction ballots.

Q. Turn to page 12; what changes have been made, if any, by the board of county canvassers in the total votes for candidates appearing on that page?—

A. I can't tell you whether any changes were made by them or not.

Q. I call your attention to the vote for drain commissioner.—A. I don't know whether they changed that or not; I couldn't swear.

Q. What are the two totals?—A. One says 571 and the other says 422.

Q. The next officer above says what?—A. Four hundred and twenty-three.

Q. Now, can you tell whether that was originally something else?—A. It might have been 523 for all I know.

Q. And a four marked over it?—A. It looks like that; I didn't write that book.

Q. That is not your handwriting?—A. No, sir.

Q. As a matter of fact you signed Exhibit 62, the statement book, on the 5th day of November?—A. I think we did; yes, sir.

Q. And the figures, both in words and in figures of the number of votes for the various candidates received was placed in there after you met the next morning at the council room, about 9 o'clock of November 6?—A. Yes, sir.

Q. I show you Exhibit 63, the poll book of the first ward of the city of Albion, Calhoun County, of the November election, 1912; look that over and see whether that is one of the books you kept as a board.—A. It is; yes, sir.

Mr. FRANKHAUSER. I will state that no officer's name appears under the oath of inspectors of election and the name of no officer appears as having sworn, having sworn them, I mean the name, nothing under the oath of clerks of election, and the same situation appears in regard to Mr. Weed and Mr. Smith, clerks, that no officer's name appears as having sworn the clerks. Page 3, of Exhibit 66, the poll book, reads: "State of Michigan, county of Calhoun, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties

of the office of clerk of this election held on Tuesday, the 5th day of November, A. D. 1912, in the first ward of the city of Albion in said county."

(No signatures and no signature of any officer swearing him.)

Q. How many clerks of election did you have there that day?—A. Two clerks.

Q. That just read on the record where there appears no signature who, if anybody, should have signed that affidavit?—A. W. R. Noyes, city clerk, swore me.

Q. Who should have signed the one just read into the record not showing any signature to the oath?—A. That was some one we needed.

Q. Who do you say swore those gentlemen?—A. The city clerk.

Q. Mr. Noyes?—A. Yes, sir. His jurat is on the other book that came to the county clerk, I think you will find it.

Q. You don't know of any other book that you returned to the county clerk, except Exhibit 63 showing whether the officers were sworn, this is the one returned?—A. I think it is; one was returned was all.

Q. Now, I wish to read from page 14 the oath of certificate of inspectors, none of you signed that?—A. No, sir.

Mr. FRANKHAUSER (reading):

"Whole number of votes cast according to the poll list is; whole number of ballots counted upon opening the ballot box was; whole number of ballots in excess of the number of voters voting and destroyed was; State of Michigan, county of Calhoun, ss: We do hereby certify that the foregoing poll list has been carefully compared by us with the duplicate poll list as required by law, and that all mistakes found in such poll lists have been duly corrected by us, and that both of said poll lists are now correct and agree with each other.

"In witness whereof we have hereunto set our hands at the city of Albion, said county and State, this 5th day of November, A. D. 1912."

(No signatures opposite on the lines where the signatures should be.)

"Inspectors of the general election held on Tuesday, the 5th day of November, A. D. 1912."

Q. Exhibit 64 is the statement book you gentlemen made out there, that is the book you made out that day or the next day?—A. In the first ward; yes, sir.

Q. I call your attention to the statement book; in that book I show you instead of writing in the names of the candidates, beginning with that of Congressman on page 7, how did you place the names in that statement book?—A. They were cut out of the instruction ballots and pasted in.

Q. What is called riders?—A. Yes, sir; they would be called that in the insurance business.

Q. I call your attention to pages 10, 11, and 12, and ask you to look at the footings; what appears there?—A. Figures.

Q. I know, but are there any changes appearing there?—A. It looks like there might have been a scratching on page 9, and I think there has been a correction on 10.

Q. In the footing?—A. Yes, sir.

Q. Is that correction you see on page 10?—A. I think so; I think there are two.

Q. I call your attention to page 12. What correction was made in the office of county surveyor in the total?—A. It says 423, and one says 523.

Q. Do you know why that change was made?—A. I do not.

Q. Do you know whether the board of county canvassers or you gentlemen?—A. No, sir.

Q. In the office of drain commissioner what changes are there?—A. It says 422, and one place 571.

Q. You can't tell whether those were made by your board or by the board of county canvassers?—A. I don't know.

Q. I call your attention to the certificate on the last page of the statement book, Exhibit 64; that also is dated November 5, 1912, isn't it?—A. Yes, sir.

Q. Was that also signed before you had the figures placed in afterwards?—A. I think so; yes, sir.

Q. I call your attention to Exhibit 65 and ask you whether that is the tally-sheet book you made out that day?—A. I think it is; it looks like it.

Q. When was that made out?—A. On election day.

Q. How was it kept? First I will ask you whether it is not true that the tally-sheet book was kept with a lead pencil?—A. Yes, sir.

Q. Both as to straight and split votes?—A. Yes, sir.

Q. And the tallies were also kept with a lead pencil?—A. Yes, sir.

Q. I call your attention to the footing on Congressman for the third district; first the names of the various candidates were written in with a pen?—A. No, sir.

Q. Don't you see they are written in there?—A. Yes, sir; some of them.

Q. Each one is written in?—A. Only a few of them are written in.

Q. John M. C. Smith?—A. Yes, sir; and Claude S. Carney and Edward N. Dingley are written in.

Q. Afterwards they did what?—A. Afterwards they cut out the names from the instruction ballots and pasted them in.

Q. Read there the vote received by John M. C. Smith, straights and splits.—A. John M. C. Smith, straight votes, 59; split votes, 52.

Q. That made a total of what?—A. One hundred and eleven.

Q. Claude S. Carney's vote?—A. Straight votes, 101; split votes, 37.

Q. Making a total?—A. Of 138.

Q. They asked you whether there were any tallies on that book to show where the split votes were tallied. Do you find 37 tallies after Claude S. Carney's name?—A. Yes, sir; under this system I find them.

Q. If you have a plus and minus system he will object to it. I will ask you this and you can explain it. As a matter of fact, there are not 37 tallies on this book showing that Claude S. Carney received 37 split votes; that is right, isn't it?—A. No tally marks.

Q. How many tallies are there for John M. C. Smith on split votes on that book?—A. They would not tally up with this.

Q. Do you want to explain that system there that you used, if you know; what is there to show that? Where does Claude S. Carney's 37 split votes show on that page, that is the point; we are not discussing your honesty or anything of that kind.—A. I didn't keep this book; I read the ballots.

Q. I say, where is there anything to show that he got 37 split votes?—A. There are 41 split Democratic votes. You will see at the top of this page "add" and "deduct." Instead of going through the ballot and having to take the ballot and read, for instance, you start in and you have to go from one corner of the ballot to the other; we don't do that; we take it off and we say "A split Democratic vote for John M. C. Smith," and we would credit John M. C. Smith with one, and right over on the other side of this mark we add and on this side we deduct—deduct one from Claude S. Carney for a Republican split that voted for Claude S. Carney, and we would credit Claude S. Carney with one vote and deduct one from John M. C. Smith.

Q. The one point I am trying to show is that there were not 52 tallies on this tally book—that John M. C. Smith got that many marks.—A. There are 526 on there for him.

Q. There are not that many pencil marks?—A. Thirty-two split votes there—42, 52, 54—two Republicans that voted for Claude S. Carney.

Q. How many tallies does that show for John M. C. Smith?—A. Split votes 52.

Q. How many tallies?—A. Counting the splits, five, which came undoubtedly from the figures 22.

Q. Two others on the right side of the line?—A. Yes, sir; deducted.

Q. There are 24 marks there on the book, split votes, for John M. C. Smith?—A. Those are the split votes.

Q. What I am getting at, there is nothing on this book showing where you got the 32 splits from; there is nothing to show where you got them from on that book.—A. These 32 split votes?

Q. The book doesn't show where you got them from, does it; that book, that tally-sheet book?—A. It shows there were 32 split votes.

Q. There are not 32 tallies there?—A. There are not that many marks; no, sir.

Q. In other words, unless somebody understood the system by which you counted, they would be unable to take the tally-sheet book and determine how many split votes either Claude S. Carney or John M. C. Smith got from the tally sheet book; you couldn't tell unless you knew your system?—A. It is there in plain figures.

Q. Some man who didn't know how you counted could not tell by that how many split votes John M. C. Smith had?—A. This system is used in a great many places.

Q. He could not tell where that 32 came from if there were not 32 tallies. Suppose you were on the board and you saw 32 votes there and nothing to show where those 32 votes came from, there is nothing in the tally-sheet book to show it.—A. There are no marks to show it.

Q. He would have to take your word that there were 32 split votes outside of what is tallied here?—A. Yes, sir.

Q. The same way with Claude S. Carney's vote. There is nothing on this book to show that Claude S. Carney had 137 split votes; no tallies by which it could be worked out?—A. I understand what you mean. There is the Democratic splits and the Republican splits, and there is the Progressive splits and the Socialists; they don't split very often.

Q. These 41 splits that Claude S. Carney got—there is nothing on the tally sheet book to show?—A. There is 41 right there; he got four Republican votes and lost that many Democratic votes.

Q. There is nothing on the book to show where the 41 came from, is there? It isn't even marked "votes"; it is not in the column marked "votes" there, straights or splits.—A. In this book there is no place.

Q. There is nothing to show under this system on the tally-sheet book where those 41 split votes for Claude S. Carney came from, is there?—A. From the Democratic Party.

Q. There are no tallies to show where they came from?—A. There is 41 marked out.

Q. You don't understand my question. It isn't even marked "split" or "straight"; without that explanation nobody could figure out what that number applies to. —It says "vote" above that.

Q. Is there anything connected with that?—A. It does not show these are 41 and 32.

Q. That 41 is not designated as anything except that is announced in the total count that there was 41 split votes?—A. Yes, sir.

Q. The point I want to make is this: This tally-sheet book does not show the tallies—separate tallies—that make up that 41?—A. It does if you understand the system.

Q. The tally-sheet book does not show the separate tallies that make up that 41?—A. It does to me.

Q. Do you claim there are 41 tallies there?—A. There is not 41 tally marks.

Q. I say there is nothing on the book to show where the 41 tallies came from, on the tally-sheet book?—A. Split votes, that is all.

Q. Can't you answer that? Is that the only way you want to answer?—A. It does not say votes on there.

Q. Is that the only way you want to answer that?—A. It does not specify votes.

Q. Are there 41 tallies there?—A. No, sir; not tally marks. There are not 41 tally marks.

Q. I call your attention now to the statement book of the first ward of the city of Albion. Just turn to the commissioner of the land office in words and figures, Augustus C. Carton.—A. Ninety-seven in writing and 94 in figures.

Q. Justices of the supreme court, turn to that; Joseph B. Steere.—A. Ninety-seven in writing and 93 in figures.

Q. Attorney general, Grant Fellows, how many did he get?—A. Ninety-seven in writing and 94 in figures.

Q. Representative in Congress at large, turn back to that. Patrick H. Kelley, how many votes are in writing?—A. One hundred and eleven.

Q. Patrick H. Kelley?—A. Ninety-seven in writing.

Q. How many in figures?—A. Ninety-four.

Q. Take the county treasurer.—A. Ninety-seven, George S. Barnes, and 94 in figures.

Q. Prosecuting attorney?—A. One hundred and eight in writing and 108 in figures.

Q. Has there been any change there, apparently?—A. Not that I know of.

Q. Does it look as though there had been?—A. That is something I don't know anything about.

Cross-examination by Mr. ADAMS:

Q. In this Exhibit 64, referring to the attorney general's vote and the commissioner of the State land office and justices of the supreme court, and where they voted for Grant Fellows, is written in "ninety-seven," in figures "94," and Augustus C. Carton, commissioner of the land office, it is written in "ninety-seven" and in figures "94," and J. B. Steere, justice of the supreme court, it is written in, opposite his name, "ninety-seven" and in figures "93." Do you know how that happened?—A. I don't know; I was not there when

they were written in. I know I corrected the rest of the tally sheets so they were absolutely correct. I know nothing about that at all.

Q. I call your attention to Exhibit 64 again and refer to page 7 of that exhibit, under the heading "Office of Representative in Congress." Opposite the name John M. C. Smith there are written in letters "one hundred and eleven" and opposite the name John M. C. Smith there are in figures "111." Is that correct, as shown by the book?—A. Yes, sir.

Q. There has been no change in either the writing or figures opposite his name?—A. No, sir.

Q. I notice the name Claude S. Carney, written in letters "one hundred and thirty-eight" and in figures opposite his name "138." Is that correct?—A. Yes, sir; that is absolutely correct.

Q. There is nothing to indicate any change in either the writing or figures there, is there?—A. No, sir.

Q. I call your attention to Exhibit 62, the statement book. I notice opposite the name John M. C. Smith, on page 7, for the office of Representative in Congress, written in in letters is "one hundred and eleven" and in figures opposite his name "111." Is that correct?—A. Yes, sir.

Q. Is there anything to indicate that there has been a change in either of those opposite the name John M. C. Smith?—A. No, sir.

Q. Opposite the name Claude S. Carney, written in letters, is "one hundred and thirty-eight" and in figures "138"; is there anything to indicate there any change in either the written letters or figures?—A. No, sir; there has been no change.

Q. The inspectors on your board that day were yourself, Mr. Keck, Mr. Smith, and Mr. Carver?—A. Yes, sir.

Q. And yourself?—A. Yes, sir.

Q. Was there any oath administered to you four inspectors when you started in in the morning?—A. Yes, sir.

Q. By whom?—A. By the city clerk.

Q. Did he fill out the certificates of oaths, or were they filled out in any of the books—election books—in use there that day?—A. They were filled out in one.

Q. The poll book?—A. Yes, sir.

Q. That poll book you put in the ballot box?—A. Yes, sir.

Q. And locked it up when you got through?—A. Yes, sir.

Q. When you got through that night did you lock up the ballot box?—A. Yes, sir; and sealed it; put the ward seal on it.

Q. What do you say as to whether the vote for Representative in Congress, as shown by the Exhibits 62 and 64, the statement books, correctly shows the vote for John M. C. Smith and Claude S. Carney which each received there on that election day from the ballots in the ballot box when you counted them for Representative in Congress?

Mr. MAYNARD. I object to that as incompetent and immaterial and the conclusion of the witness.

A. Absolutely correct.

Q. Now, they asked you about the tally sheet you have in your hand. I notice your board changed the ruling on the pages there where the count was kept for the candidates for Representative in Congress from what the printed form was.—A. Yes, sir.

Q. You drew a big, heavy, blue line through page 12, didn't you, and 13?—A. Yes, sir; page 13.

Q. On the left side of the line you put the word "Add?"—A. Yes, sir.

Q. And on the right side of that line you put the word "Deduct?"—A. Yes, sir.

Q. Is that correct?—A. Yes, sir.

Q. I notice that you have opposite the name John M. C. Smith 22 strokes or tallies, lead-pencil tallies?—A. Yes, sir.

Q. On the left hand of that line on the add side?—A. Yes, sir.

Q. On the left-hand side of the blue line you have two tallies?—A. Yes, sir.

Q. I also notice next to the name John M. C. Smith now are the figures 32?—A. Yes, sir.

Q. What do the figures 32 indicate?—A. Thirty-two split votes.

Q. This tally-sheet book is the one on which you kept the split votes?—A. That is all.

Q. That is what it was used for?—A. Yes, sir; that is what it was for.

Q. Whatever there is there until you get over to the totals on the right-hand side of page 13 relate to the split votes?—A. Yes, sir.

Q. And nothing else?—A. Not anything else.

Q. That 32 opposite the name John M. C. Smith indicates the split vote, does it?—A. Yes, sir.

Q. I notice the name Claude S. Carney you have 41 in figures?—A. Yes, sir.

Q. What does that 41 indicate?—A. Forty-one split votes.

Q. I also notice opposite the name Claude S. Carney 3 votes, what does that indicate?—A. That he got 3 votes from some other party.

Q. That is on the add side of the line?—A. Yes, sir.

Q. I notice opposite the name Claude S. Carney on the deduct side you have seven strokes.—A. Yes, sir.

Q. What does that indicate?—A. Seven Democrat votes for somebody else.

Q. It means they voted Claude S. Carney 7 votes?—A. Yes, sir.

Q. The two strokes you have opposite the name John M. C. Smith beside that blue line means taking 2 votes off John M. C. Smith?—A. Yes, sir.

Q. On the add side of that line you have, in figures, 22 opposite the name John M. C. Smith?—A. Yes, sir.

Q. You also have 22 strokes?—A. Yes, sir.

Q. You added those two together and you have 54?—A. Yes, sir.

Q. You take the two on the deduct side of that line and you have 52?—A. Yes, sir.

Q. I notice the total split vote carried out in the column "Total split votes" is 52.—A. Yes, sir.

Q. That figures out exactly opposite the name John M. C. Smith?—A. Absolutely correct.

Q. Anybody can see right on there, you have added those words "add" and "deduct" and it shows on the face how you did it?—A. Yes, sir.

Q. Any schoolboy can do that?—A. It simply expedites matters.

Q. It is plain on the tally-sheet book just how you did that; anybody could pick up the book with the information that is on there and the "add" and "deduct," and he will see that one line is "add" and the other side "deduct," and the data is there by which you can determine the very figures you put in there in the total split column?—A. Yes, sir.

Q. Opposite the name Claude S. Carney, on the add side of the big heavy line your board drew through this exhibit, you have the figures 41?—A. Yes, sir.

Q. You have three strokes?—A. Yes, sir.

Q. And those added together make 44?—A. Yes, sir.

Q. On the "deduct" side of that line you have charged up against Claude S. Carney 7 votes?—A. Yes, sir.

Q. You have 44 and take 7 from 44 and you have what?—A. Thirty-seven.

Q. You have 37 total split votes opposite the name Claude S. Carney?—A. Yes, sir.

Q. Now, then, do you know whether that was written in there opposite the names of the candidates for Representative in Congress the night of the election, November 5, 1912?—A. It was not.

Q. Neither in writing nor figures?—A. Neither one.

Q. In this statement book, Exhibit 64?—A. No, sir; that was filled out by Mr. Keck, the Republican alderman.

Q. Did you look this over the next morning?—A. No, sir; I left the city.

Q. You stated that that tally-sheet book was completed on the night before your board adjourned?—A. Yes, sir.

Q. And the vote announced to the public?—A. Yes, sir.

Q. So the public knew whether you were making any false returns or not? (No answer.)

Q. Now, you say that this tally-sheet book, Exhibit 65, was written out and completed?—A. Yes, sir.

Q. The night before your board adjourned?—A. Yes, sir; and the vote announced.

Q. As shown now in this tally sheet for Representatives in Congress, was it not?—A. It was read off that book; that is the book that was kept.

Q. This tally-sheet book showed that the total straights were 59 and the total splits 52?—A. Yes, sir.

Q. The total votes received; 111 for John M. C. Smith?—A. Yes, sir.

Q. It shows Claude S. Carney's total straight votes 101 and the total split votes 37, and total votes received 138, does it not?—A. Yes, sir.

Q. Exhibits 62 and 64, for Representative in Congress, show for John M. C. Smith 111?—A. Yes, sir.

Q. And for Claude S. Carney 138?—A. Yes, sir; both of them.

Q. Your attention was called by counsel to page 12 of Exhibit 64 and page 12 of Exhibit 62, under the heading "Total votes received" for the different candidates for county surveyor, and it shows 423, does it not, for the different candidates for county surveyor?—A. In pencil mark, 423.

Q. In Exhibit 62 it shows 423?—A. Yes, sir.

Q. In Exhibit 64 it shows 523?—A. Yes, sir.

Q. The votes received for the different candidates there for county surveyor foot up how much?—A. Four hundred and twenty-three.

Q. Under the heading "Drain commissioner," on Exhibit 64, it shows 422 total votes under that 571, does it not?—A. Yes, sir.

Q. In Exhibit 62, the one I hold in my hand, the 571 has two lines drawn across?—A. Yes, sir.

Q. The total votes for the various candidates for commissioner, how much do they amount to?—A. Four hundred and twenty-three.

Q. There have been no changes, erasures, or corrections in the figures that are opposite the names for the office of county surveyor on either of those exhibits 62 or 64?—A. No, sir.

Q. There are no changes in the figures opposite the names of any of the candidates for the office of drain commissioner on either of these exhibits 62 or 64?—A. No, sir.

Q. These figures opposite the names of the candidates for those two offices have not in any respect been changed; the only place where there has been a change is in the total vote?—A. An error in the total.

Q. They changed that over?—A. Yes, sir; that was filled out after I left the city.

Q. If there were no total votes put in on these exhibits you could still add up the individual votes received by each officer and determine how many total votes were received?—A. Yes, sir; 422.

Q. You said there were a couple of men who received assistance there?—A. Yes, sir.

Q. One was John Bremer?—A. Yes, sir.

Q. Do you know John Bremer?—A. Yes, sir.

Q. He was the first man who applied for assistance?—A. Yes, sir; I think so.

Q. Was he an old man?—A. Yes, sir.

Q. How old was he?—A. I think 70 years old.

Q. Was there anything in his appearance that indicated that he was in any way physically disabled, eyesight bad, or anything of that kind that you could see?—A. He couldn't see without glasses; I know that, because I sold him the home where he lives.

Q. You knew that he couldn't see without glasses?—A. Yes, sir.

Q. Did he have his glasses there that day?—A. No, sir; but he can't write.

Q. You knew that before this election day?—A. Yes, sir; he was very near-sighted; that was all.

Q. Did he have any glasses that day there to the polls?—A. No, sir; he did not.

Q. Did you go to the booth with him?—A. I did not.

Q. Who did?—A. Alderman Keck, a Republican, and George Carver, a Democrat.

Q. Do you know what occurred in the booth?—A. No, sir; I do not; only what I heard him say.

Q. Was he the fellow who wanted to know whether he would vote for Teddy or Roosevelt?—A. Yes, sir; I heard that.

Q. You don't know of your own knowledge whether those inspectors marked his ballot or not, or simply told him the difference between Teddy and Roosevelt?—A. They told him he was one and the same person.

Q. But whether they in any way assisted him in marking his ballot you don't know?—A. No, sir; I do not.

Redirect examination by Mr. FRANKHAUSER:

Q. How far is the council room where you made out your returns from the polling place where you voted?—A. About half a block.

Q. As I understand you, about half past 10 o'clock at night you all went home and went to bed and reassembled the next morning about 9 o'clock at the council room and made out your returns?—A. Yes, sir; we took the ballot box from the voting place to the council chambers.

Q. You went home about half past 10 o'clock when you got through, and put the ballot box in the council chamber and reassembled the next morning and completed your returns?—A. We reassembled the next morning; yes, sir.

Q. Did you open the ballot box when you returned?—A. Yes, sir.

Q. What for?—A. To get the books out so they could not be tampered with, and it was locked up and sealed up.

Q. You had all the books in the box?—A. Except the registration book, and that was turned over to the city clerk and put in the vault.

Q. Look at those two poll books; one is from the second ward, and the other is your ward; are the words "add" and "deduct" in the same handwriting?—A. I think not; it may be.

Q. If it was, how could that be, one being in the second ward and one in the first?—A. The city clerk wrote "add" and "deduct" here. I don't know whether he did there or not.

Recross-examination by Mr. ADAMS:

Q. This ruling in the tally-sheet book that you used in your ward—these rulings with the big blue line—I call your attention to the words "add" and "deduct" entered in this book; they were presented to your board on the morning of election?—A. No, sir.

Q. When were they put in there?—A. In the afternoon, toward night.

Q. Do you know who wrote them?—A. Yes, sir.

Q. Who ruled your books?—A. The city clerk.

Q. Who put in the words "add" and "deduct"?—A. The city clerk.

WILLIAM BEMER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. FRANKHAUSER:

Q. You live in Albion?—A. Yes, sir.

Q. You are supervisor of the second ward?—A. Yes, sir.

Q. And was November 5, 1912?—A. Yes, sir.

Q. As such supervisor you acted on the election board that day?—A. Yes, sir.

Q. What part of the work did you do that day?—A. During the day when people were voting I received the ballots and deposited them in the ballot box, or voters rather.

Q. Did you do that all day?—A. Yes, sir; except when I went to dinner.

Q. Were you there that day when illiterate voters asked for assistance?—A. We have no illiterate voters over there that I know of; we have two blind men and two others almost totally blind. I am not positive that they all voted that day. I am not certain whether they all voted or not. I am of the opinion they did.

Q. Did you hear any oath administered to any voter that day who asked for assistance?—A. No, sir; I did not. I might say that those men are men that we are all well acquainted with and have been for years, and I know that they are blind; two of them I know can scarcely see a form at any time—real old men.

Q. Two of them you remember of applied for assistance?—A. I think the entire four applied for assistance, but I am not positive.

Q. Are you sure that none of them were sworn?—A. No, sir.

Q. Now, you closed, I suppose, at 5 o'clock and began counting?—A. We closed at 5 o'clock and began counting; yes, sir.

Q. When did you get through?—A. It was nearly if not quite 11 o'clock, as I remember now.

Q. What did you do then?—A. We took the ballot box and took it down to the council chamber and left it there and went home, putting all the paraphernalia in the ballot box except, I think, a statement of the votes. I do not think we put that in.

Q. What did you do with the ballot box?—A. We took it to the council chamber.

Q. In whose possession was it?—A. I suppose in the possession of the city clerk. It is the usual place to deposit them when we get through.

Q. You put that in the council chamber?—A. Yes, sir; in the room——

Q. Had you completed the count?—A. Yes, sir.

Q. What books did you put in there?—A. As I remember it now we put in all the books except the tally sheet—not the tally sheet, but the statement book.

Q. Did you put in the books that you afterwards returned here to Marshall?—A. No, sir; they were not put in there.

Q. Who took care of those?—A. Mr. Laberteaux, a man appointed by the council to act as inspector in that ward.

Q. Where did he take them?—A. I think he locked them in the safe in his office that night. I am not positive; I think he did. He is a very painstaking man. I think he did.

Q. You turned them over to him and he took care of them?—A. Yes, sir.

Q. What state of perfection were they, how near had they been made out?—A. I couldn't tell you. I might tell more about it if I could see the book.

Mr. ADAMS. What they did after the board adjourned I object to.

Q. Now, I think I have shown that you were supervisor in your ward?—A. Yes, sir.

Q. You acted as chairman, did you?—A. By virtue of my office I suppose I am chairman of the board.

Q. I will ask you now—I will go back a little—where were you when you signed up those returns?—A. You mean the statement—

Q. I mean the board of inspectors when you say you signed the returns.—A. When we signed the tally sheet? I was about to say that the poll book and the tally sheets were signed up and locked into the box with the ballots after we got through counting that night, on the night of the 5th, on election night.

Q. I show you Exhibits 66 and 67, being the two statement books, as we claim, from the second ward of the city of Albion. I will ask you whether those are the books you gentlemen made out?—A. Those are the books. My name is signed here.

Q. You signed first in each exhibit?—A. I think I signed in each one first; yes, sir.

Q. Just read the certificate on the record there and the names signed to the certificate in the back part. Read the certificate in the statement book marked "66."—A. (Reading:)

"STATE OF MICHIGAN,

"County of Calhoun, ss.

"We do hereby certify that the foregoing is a correct statement of the votes given in the second ward of the city of Albion, county of Calhoun, State of Michigan, at the general election held on the Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the city of Albion, said county and State, this 6th day of November, A. D. 1912.

"WILLIAM BEMER.

"FRED LABERTEAUX.

"OTTO CONRAD.

"CHARLES H. BAKER.

"H. C. NELSON."

Q. How many of them signed there as inspectors?—A. All five of them signed.

Q. I will ask you to look at Exhibit 67, the other statement book, and ask you whether that certificate is dated also November 6 and signed by the same men you just read?—A. I think they are identical; I don't see any difference in them.

Q. As a matter of fact, did you sign them November 6?—A. Yes, sir.

Q. Where were you when you signed them?—A. In Mr. Laberteaux's office.

Q. Where was that with reference to the polling place?—A. Well—

Q. How far from it?—A. Well, I suppose it would be considered two blocks, although one street does not go through.

Q. A couple of blocks from the polling place?—A. Yes, sir.

Q. When did you sign it?—A. The next morning after election.

Q. What time of day?—A. We met at about 9 o'clock in the morning and signed them up.

Q. In other words, you adjourned after counting the votes and met the next morning at 9 o'clock in Mr. Laberteaux's office and made out your returns?—A. No, sir; I don't think we adjourned; we counted the votes and placed them in the ballot box and closed it; the polls were closed.

Q. And you went home and went to bed?—A. Yes, sir; and finished up the next morning.

Q. Reassembled the next morning and made out the returns?—A. Yes, sir.

Q. How much of those returns did you make out when you reassembled? Did you write any words or figures in the statement book?—A. I am not positive whether that was all done the next morning or not; part may have been done the night before.

Q. Don't you have any recollection about how long you stayed at Mr. Laberteaux's office?—A. Some little time; I should say we were there two hours.

Q. Can you give a fairly correct statement of about how much writing you did there?—A. If you will show me that book, I think I can tell you.

Q. I am only showing you the two statement books now.—A. After looking at this I will look at the other one and then I will answer your question. I am of the opinion that all this was done in his office, because the handwriting here in the one book first written in, that book, is my writing.

Q. You say you think that was done in the office?—A. I think this book was all done in the office.

Q. What book is that. Exhibit 67?—A. Yes, sir.

Q. Look at the other one, Exhibit 66. What do you think about that?—A. I was looking to see whether there was any of my writing in it.

Q. Take your time.—A. I do not think there is any of my writing in there except to sign up.

Q. Then, you can't remember how much of that was made out at Mr. Laberteaux's office the next morning?—A. No, sir; I couldn't say that I know.

Q. I will ask you to turn to—A. I think one book was all made out in the office and I think the other one was made out before.

Q. Anyway you didn't sign any of them until after they were made out?—A. No, sir; we couldn't very well.

Q. I mean you didn't fill in the words and figures—you didn't sign and fill in the words and figures afterwards?—A. No, sir.

Q. I call your attention to the vote on Congressman for the third district; I wish you would read into the record what John M. C. Smith and Claude S. Carney received there?—A. John M. C. Smith in words "seventy-nine" and in figures "79"; Claude S. Carney in words "one hundred and twenty-six" and in figures "126."

Q. The other statement book agrees with those figures; look at it?—A. Yes, sir; they are the same.

Q. I show you Exhibit 68; what is that?—A. The poll book of the general election held on Tuesday the 5th day of November, A. D. 1912, in the second ward of the city of Albion, county of Calhoun, State of Michigan.

Q. Turn to where the officers were sworn and tell how many inspectors were sworn in there that day; how many signed the oath of office as inspectors?—A. Six.

Q. Six inspectors?—A. Yes, sir; do you wish the balance of them?

Q. Yes.—A. Charles S. Loud was put on as an extra man for the amount of work to be done that day. After the voting was all done and the polls closed, because he had other business or something of that sort, we excused him.

Q. He never signed any of the returns?—A. No, sir.

Q. How many clerks did you swear there? Did this man Loud act as inspector during the whole day until you quit and the polls closed at 5 o'clock?—A. Yes, sir.

Q. Then you had six inspectors during the election?—A. I don't know whether you would call them all inspectors or not.

Q. It shows they were sworn as inspectors, does it not; look at the oaths of office and read the names of the inspectors as they appear in the book?—A. (Reading:) "Charles H. Baker, H. C. Nelson, Otto Conrad, Charles S. Loud." How am I going to know who wrote that "inspector" over that word "clerk"? Somebody erased "clerk" and wrote in "inspector."

Q. Read it as the book appears.—A. I will explain here by saying some one has drawn a line through the word "clerk" and written in "inspector."

Q. That is on the page of the oath of clerks?—A. Yes, sir; some one has drawn a pen through that and written in "inspector." William Bemer's name is under that.

Q. What is the next one?—A. I don't know whether I signed that before "inspector" was written in there or not.

Q. You would be an inspector, being the supervisor?—A. Yes, sir. The next is Frank Laberteaux. The word "clerk" has a line drawn through and the word "inspector" written over it.

Q. Was Laberteaux an inspector?—A. He was appointed election inspector by the council.

Q. He signed this as inspector, as it now appears?—A. Yes, sir; I don't know whose writing that is nor when it was done.

Q. Is that all?—A. As it appears on the book they are all sworn in as inspectors.

Q. Yourself and Laberteaux were actually inspectors?—A. Yes, sir.

Q. Then, more than one man swore you all in as a notary public?—A. Yes, sir.

Q. Read that oath, what you signed.—A. (Reading:)

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of clerk of this election held on Tuesday the 5th day of November, A. D. 1912, according to the best of my ability.

"Taken, subscribed, and sworn to before me this 5th day of November, A. D. 1912.

"R. McCUTCHEON, *Notary Public*."

Q. Nobody signs there as clerk; nobody takes the oath as clerk?—A. No, sir.

Mr. FRANKHAUSER. Apparently there was a clerk sworn that did not sign.

The WITNESS. It would look as though some one filled it all in there and nobody signed it; the notary public signed it in the wrong place. No one signed it there.

Q. Did you have anyone except the names you have read on the board that day as clerks or otherwise?—A. No, sir.

Q. Mr. McCutcheon did not act on the board?—A. No, sir.

Q. I call your attention to the last page where the certificate appears on the poll book; what is the date of that certificate there—go ahead—what is the date of that certificate in the poll book?—A. The 5th day of November.

Q. Well, now, as a matter of fact, that should have been dated the 6th if you had it dated the same day you signed it; wouldn't it?—A. I can't see it that way.

Q. When did you sign it?—A. This poll book was signed on the 5th and locked up in the ballot box.

Q. Then, it was one of the statement books you signed on the 6th?—A. Yes, sir; that is all.

Q. But this poll book was signed before you left the voting place?—A. Yes, sir.

Q. I show you Exhibit 69, the tally-sheet book from that precinct of the second ward of the city of Albion, and ask you how that was kept: whether in ink or pencil or both?—A. Well, some was filled out with ink and the tallying seems to have been done with a pencil and the writing seems to have been done all in ink except in one or two instances.

Q. The figures are not all in ink?—A. The figures are in pencil mark.

Q. And the tallies, they are in pencil?—A. Yes, sir.

Q. On page 10, the names of the officers are some in pencil?—A. Yes, sir.

Q. I call your attention to the office of Congressman for the third district; read the figures opposite the name of John M. C. Smith of the total straight votes.—A. Thirty-three.

Q. The splits?—A. Forty-six.

Q. The total?—A. Seventy-nine.

Q. Claude S. Carney's total straight votes; how many?—A. Eighty-one.

Q. Total splits?—A. Forty-five.

Q. The total?—A. One hundred and twenty-six.

Q. I will ask you this question, whether pages 12 and 13 are not tallied in lead pencil?—A. Yes, sir.

Q. I will ask you whether there appears on that page opposite the name of John M. C. Smith 46 tallied votes?—A. It might not appear; you understand this system is the add and deduct.

Q. The question is whether there are 46 tallies appearing opposite his name; when we are talking of tallies I mean straight up-and-down marks; are there 46 straight up-and-down marks there opposite the name of John M. C. Smith?—A. No, sir; not done in that way.

Q. But you started with how many? Thirty-two splits?—A. Forty-six splits.

Q. Explain on the record where you got the 46 from, whether it could be obtained by an examination of that page of the tally sheet?—A. I will answer that by saying it could be obtained if you understood this system of counting.

Q. Where did you get the 46 from? Could it be obtained by an examination of that page of the tally sheet by some one who did not understand that system?—A. Why, probably not.

Q. Could you figure from that page, if you did not know how the votes had been counted, where that 46 was obtained from?—A. You could if it were some one who understood the system.

Q. But without that you could not?—A. I think I could.

Q. You have the book before you?—A. Yes, sir.

Q. I say suppose you had not been on that board and didn't know anything about the system. could you figure from those two pages before you where those 46 split votes came from?—A. I think I could; yes, sir.

Q. How?—A. Let me take a paper and pencil and I will try to show you.

Q. Explain how you got those 46 votes; you have a pencil, paper, and the figures.—A. Well, we have got John M. C. Smith on the count; he got 33 straight votes and he got 32 splits.

Q. Where does it show it on the book?—A. Right here.

Q. Whereabouts is the word "split"?—A. That is what that means; it don't occur there.

Q. If the word "split" is not there, how would a stranger know they were splits; that is what I am asking you?—A. I stated a little while ago, and I am not going to do it again.

Q. You have to assume that these are 32 split votes to start with?—A. Yes, sir.

Q. If you didn't know there were 32 split votes you could not, from this page, figure up 46 split votes. could you?—A. You might not be able to do it if you did not understand that system of counting.

Q. Assuming, then that the canvassing board did not understand that system of counting, could they tell from the tally sheet where those 46 votes came from?—A. I presume if the board did not understand that system that it would call some one that did and find out.

Q. If you didn't know anything about that system of counting, could you take these two pages open before you and ascertain where those 46 split votes came from?—A. I think I could if I would take the time to study it out.

Q. You could stay there a month and you could not tell whether that was 32 split votes. There is nothing to show that this is 32 split votes, is there? You don't know what it is, do you, unless somebody would tell you? It is not in the column headed "Split votes"?—A. No, sir.

Q. It is not in the column headed "Straight votes"; consequently you would have to assume something with regard to those 32 votes, would you not?

Mr. ADAMS. I object to counsel cross-examining his own witness.

Q. Isn't that right? You would have to assume those 32 split votes—assume something that that page does not show?—A. I will repeat what I stated before; anyone that didn't know that system of counting perhaps would have difficulty in making that out.

Q. In order to make that out, you would have to assume that was 32 split votes?—A. That would depend upon the ability of the man.

Q. Could he?—A. I don't know whether he could or not.

Q. Suppose a man from Hillsdale should come over here and you would hand him that book, he could not tell anything from that page—from the tally-sheet book you handed him?

Mr. ADAMS. I object to cross-examining his own witness.

Q. Isn't that true?—A. If he didn't know, he might ask somebody who did.

Q. He would have to get outside information—outside of the book—wouldn't he?—A. Possibly.

Q. That would be true of the Claude S. Carney split vote, would it not?—A. What applies to one would, I think, apply to the other.

Q. When you got through counting in the evening what did you do with this ballot box?—A. We put the ballots in the box, tied them up, and put the necessary books on the inside, except, of course, the tally sheet, I think that is called, and locked and sealed the box and took it over to the council chamber and left it there.

Q. In whose charge was it?—A. It is presumed to be in charge of the city clerk; I don't imagine the city clerk was there and stayed all night with the ballot boxes, and has been there ever since.

Q. It was sealed and delivered to the city clerk's office?—A. Yes, sir; the council room provided for that purpose.

Q. You left it there that night?—A. Yes, sir.

Q. Was it locked in the room?—A. Yes, sir.

Q. I mean the room it was taken to?—A. I presume it was locked, and I presume other boxes came in after we went away.

Q. You don't know of your own knowledge?—A. I don't know that the door was locked after the votes were left there.

Q. Who took the boxes there?—A. I went, and two other fellows; I can't tell just the members of the board; it didn't take the whole number; some of them.

Q. You don't know whether the room was locked that the boxes were put in?—A. I don't know that it was locked after we went away. I might make that a little plainer perhaps, so you will understand it better, by saying that in the back part of the council chamber is a hall or room where the firemen sleep, and the front part of the building is used as a council chamber, and there is some one there all the time, and no one can get these boxes day or night without being seen, I don't believe, if it was not locked.

Cross-examination by Mr. ADAMS:

Q. The tally-sheet book, to which your attention has been called, Exhibit 69, was used there that day, in so far as you kept any tallies there at all, rather than the totals of any particular votes for the purpose of what? Counting what—what ballots, splits or straights?—A. The total vote was on the book there.

Q. In the column, "Total straight votes," you entered the total straight votes?—A. Yes, sir.

Q. And also the total split votes received?—A. Yes, sir.

Q. These strokes you put down here; did you put down on that book any strokes except the split ballots?—A. These splits are for or against; one side would be for, and the other side would be against.

Q. Suppose you take the book—that book—and it didn't have those words "add" and "deduct" opposite the candidates' names, you would not know from that book whether they were splits or straights?—A. I don't think I would.

Q. So in the poll book you had the tally marks simply show the split votes; you couldn't tell whether the board put those tallies on there—the members of the board that day put on their strokes to represent the split votes or represent the straights, could you?—A. No, sir.

Q. That book, when you had carried out the total split votes on this Exhibit 69, then take your figures here on this book; a man could not determine, could he, what your process was by which you got those figures?—A. It seems to me they could.

Q. Opposite the name of John M. C. Smith you notice the figures 32?—A. Yes, sir.

Q. You have drawn a big heavy blue line through page 13?—A. Yes, sir.

Q. So that line passed by every man's name on that page?—A. Yes, sir.

Q. Well, now, opposite the name of John M. C. Smith, there are the figures 32?—A. Yes, sir.

Q. There are also 21 strokes?—A. Yes, sir; opposite his name.

Q. Now, then, on the left-hand side of the long blue line is the word "add"?—A. Yes, sir.

Q. And on the right-hand side is the word "deduct" on those two pages?—A. Yes, sir.

Q. You had 21 and the strokes 32, as represented in figures, you would have 53?—A. I think those are the figures.

Q. You could get that from the page, could you not?—A. Yes, sir.

Q. On the right-hand side of the blue line opposite the name of John M. C. Smith you find seven strokes?—A. Yes, sir.

Q. You take the seven and that says "deduct"?—A. Yes, sir.

Q. Whatever is on the right-hand side of the blue line it says "deduct"?—A. Yes, sir.

Q. You deduct those 7 strokes from the strokes on the left-hand side of the blue line opposite the name of John M. C. Smith amounting to 53 and what do you have?—A. Forty-six.

Q. Over in the column "Total split votes" you have 46?—A. Yes, sir.

Q. That shows there were 46 split votes?—A. Yes, sir.

Q. Then, figuring backward you find that 32 and 21 added make 53?—A. Yes, sir.

Q. On the right-hand side of the line it says, "deduct seven"?—A. Yes, sir.

Q. It shows on the face what it figures, don't it? When you take off the figures there on that page there is no other way that it could be figured out?—A. I know of no other way.

Q. Opposite the name of John M. C. Smith, under the heading "Total straight votes," it says, on this Exhibit 69, 33?—A. Yes, sir.

Q. You add the 33 total of straight votes and the total 46 split votes and you have 79?—A. Yes, sir.

Q. The total of splits and straights there in Exhibit 69 are 33 and 46 opposite the name of John M. C. Smith, amount to 79?—A. Yes, sir.

Q. That corresponds exactly with the total votes received, as shown under that column headed "Total votes received," opposite the name of John M. C. Smith?—A. Yes, sir.

Q. Opposite the name of Claude S. Carney in this Exhibit 69 you have in figures 46?—A. Yes, sir.

Q. You also have opposite the name of Claude S. Carney, in strokes, six?—A. Yes, sir.

Q. Those figures 46 and the strokes 6 are on the left-hand side of the blue line?—A. Yes, sir.

Q. Under the heading it is entitled "Add"?—A. Yes, sir.

Q. So you add the 46 and the 6 and you would have what?—A. Fifty-two.

Q. On the right-hand side of the blue line, opposite the name of Claude S. Carney, under the heading to the right of the blue line "deduct," you have seven strokes?—A. Yes, sir.

Q. That says "deduct"?—A. Yes, sir.

Q. Deduct those 7 strokes from the sum total of the figures 46 and the 6 strokes on the left-hand side of the line, you would have 7 from 52?—A. Yes, sir; that would be 45.

Q. Under the heading "Total split votes" you have 45, haven't you?—A. Yes, sir.

Q. Adding together those 45 total split votes and the 81 total straight votes for Claude S. Carney, it would make 126?—A. Yes, sir.

Q. Those are the figures that are contained in the column headed "Total votes receiver"?—A. Yes, sir.

Q. When you take the split votes under the heading "Total split votes" opposite the name of John M. C. Smith in this exhibit as 46, then come back here to these strokes opposite the name of John M. C. Smith, it is very plain to see how it is obtained?—A. Yes, sir.

Q. It is very plain to see they are split votes?—A. It is to me.

Q. Isn't it so on the book there, when it says the total split votes are 46, opposite the name of John M. C. Smith; that shows the split votes and it says so on the book; does not that say so right there, "Total split votes 45," opposite John M. C. Smith's name?—A. Yes, sir.

Q. You opened the ballot box on the morning of the 6th?—A. No, sir.

Q. What did you put in the ballot box; you said something about tally sheets?—A. The tally sheet and poll book.

Q. Where did you put those, the tally sheet and poll book, in the box?—A. Yes, sir.

Q. In the ballot box?—A. Yes, sir; together with the ballots.

Q. What did you do with the registration book?—A. I am not positive about that, and I think I am positive that Mr. Laberteaux took that home and locked it in the safe.

Q. What books did you have before you over there on the morning of the 6th that you had used on the 5th?—A. Just the statement books, that is all.

Q. Did you have the tally book?—A. The tally book was locked in the box. We didn't have that there; they were locked up and signed up.

Q. How did you figure out the number of votes over there; you had one tally-sheet book, didn't you?—A. After we got all through counting and the entries were made on the tally sheet and poll book, we took one of the instruction ballots and marked it all out as a reference to go by.

Q. Here is the tally-sheet book you returned among the returns to the county clerk or to the probate judge for the board of county canvassers; where did you get that tally-sheet book there that morning of the 6th; did you complete that the night of the 5th?—A. That tally sheet was completed the night of the 5th.

Q. Where did you get it that night?—A. In the ballot box.

Q. To get it out the next morning and return it to the county clerk or the judge of probate you must have unlocked the ballot box and taken them out?—A. I don't know; I presume it was locked and the proper books locked in the box, and I suppose that was locked in.

Q. It appears to be the book returned to the county clerk? It is the tally-sheet book, Exhibit 69?—A. Are there two of those?

Q. Yes, sir.—A. One was probably locked in the box and one was used in the morning, but I am not positive about that.

Q. I notice on pages 12 and 13, opposite the name John M. C. Smith, these figures under the heading "Total straight votes," "Total split votes," and "Total votes received," likewise the figures which appear opposite the name Claude S. Carney. What do you say as to whether those figures here, 33 straight votes for John M. C. Smith and 46 split votes for John M. C. Smith, correctly show the number of straight votes and the number of split votes that you counted up there that day—your board—for John M. C. Smith; does that tally with the vote cast that was deposited in the ballot box?—A. Yes, sir.

Q. Opposite the name of Claude S. Carney, total straight votes 81, total splits 45; what do you say as to whether those respectively show correctly the number of straights and splits that Claude S. Carney got there that day of the votes that were deposited in the ballot box, I mean by your board?—A. I think they do.

Q. Did you after you got through that night declare the vote for John M. C. Smith as a candidate for Representative in Congress?—A. Yes, sir.

Q. Publicly?—A. Yes, sir.

Q. Did your board, after you got through counting before going away, declare the vote for Claude S. Carney as shown by the count you had made there?—A. Yes, sir.

Q. Publicly declared that?—A. Yes, sir.

Q. Did you do this with every candidate on the ticket?—A. Yes, sir.

Q. Publicly declare the votes, straights and splits?—A. Yes, sir; read the final result publicly.

Q. Now, who acted as inspectors there that day on your board?—A. Do you wish to make a division between inspectors and clerks?

Q. Yes. Who acted as inspectors?—A. It was the intention——

Q. Who acted as inspectors there on the board?—A. It was another election board that Mr. Loud and Mr. Knowlton acted as clerks, I remember, and the other four as inspectors. Some error seems to have been made.

Q. Who did act as clerks that day?—A. The fact of the matter is, when one would go to dinner another would take his place about in that way, so no one acted as clerk all the time. Mr. Loud did the principal part of the writing during the time the ballots were being cast.

Q. All the men who acted there on that board that day were sworn in before they acted?—A. Yes, sir.

Q. Now, the statements books here, Exhibits 66 and 67, and your tally-sheet book for Representative in Congress, I wish you would state whether they agree as far as the votes received for John M. C. Smith and Claude S. Carney, for Representative in Congress are concerned.

Mr. MAYNARD. Objected to as incompetent, irrelevant, and immaterial and not the best evidence.

A. The books correspond, both as to figures and writing.

Q. The tally-sheet book, Exhibit 69 and the statement book, Exhibit 66, and the statement book, Exhibit 67, show that John M. C. Smith, Representative for Congress, received 79 votes?—A. Yes, sir.

Q. Each and every one of those books show that?—A. Yes, sir.

Q. Each of those exhibits show that Claude S. Carney received 126 votes for Representative in Congress?—A. Yes, sir.

Q. Just alike?—A. Yes, sir.

Q. Now, you speak about some men receiving some instructions there that day?—A. Yes, sir.

Q. You think there were possibly four of them?—A. I am quite positive there were four; I am quite sure, but not absolutely sure.

Q. Now, those men who were instructed there that day, did I understand you to say were noticeably physically defective?—A. Two were totally blind and two others incapable of seeing objects of any kind.

Q. You knew that when they came in to vote?—A. I had known it for years; had a personal acquaintance with all of them.

Q. They were all old men, were they?—A. No, absolutely and totally blind; the men were not really old men, they were 50 or 60; two were, I think, 80.

Q. You knew that their eyesight was bad?—A. Yes, sir; I knew that.

Q. You knew that before that time?—A. Yes, sir; for a long time I have known them.

Q. Was there anything to show that they were not physically able to mark their ballots without assistance?—A. It could not be readily discerned by any-

one; they could go about with a cane; just see about enough to tell daylight from dark. I knew them.

Redirect examination by Mr. FRANKHAUSER:

Q. Did anyone act as instructor there that day, to instruct the voters?—A. Yes, sir.

Q. Who acted?—A. I am not certain as to the individual. I am positive as to one. Mr. Knowlin was one. I know; but I am not so certain of the other. Mr. Laberteaux was the other individual, because he always had made it a point to have one representative of each party go to the booths with those blind people.

Q. Did you have one regularly appointed instructor of voters when the ballots were distributed?—A. No, sir; we didn't have an instructor. It was presumed they knew how to vote.

Q. Now, the first man's name is Charles H. Baker. Did he hold any city office?—A. He is alderman.

Q. H. P. Knowlin, what was he?—A. He was elected by the electors that morning to serve on the board.

Q. Otto Conrad, what was he?—A. An alderman.

Q. Charles L. Loud?—A. He was elected by the electors that morning.

Q. William Remer was the supervisor?—A. Yes, sir.

Q. Frank Laberteaux, what was he?—A. He was duly elected by the city council to serve as an election inspector.

Q. As I understand, the council elected two, and one was elected by the bystanders?—A. The council elected one and two were elected by the organization as organized that morning for the election.

Q. There would be three inspectors who were elected besides those who would be inspectors by virtue of their office?—A. Counting the one appointed by the board of aldermen.

Recross-examination by Mr. ADAMS:

Q. You say no one was appointed to instruct voters generally that day?—A. No, sir.

Q. What you meant by instructor was inspectors who gave assistance to blind men who came in to vote?—A. All the assistance was given by the individuals I have mentioned.

M. O. REED, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. FRANKHAUSER:

Q. Mr. Reed, you live in Albion?—A. Yes, sir.

Q. Which ward?—A. The fourth ward.

Q. A voter there?—A. Yes, sir.

Q. Did you vote there last fall?—A. Yes, sir.

Q. Were you on the board at that time?—A. Yes, sir.

Q. What office, if any, did you hold in the city of Albion?—A. I am supervisor of the fourth ward.

Q. What part of the work did you do there the day of the election?—A. I think I gave out the ballots.

Q. You handed the ballots out to the voters?—A. Yes, sir.

Q. Did that all day, did you?—A. I think so, except when I went away to meals.

Q. While working in that position did any ask for assistance in voting?—A. I don't remember of any.

Q. When you went to your meals whom did you leave there?—A. I think Mr. Steinfellow.

Q. He was an inspector?—A. He was an alderman.

Q. Was he on the board that day?—A. Yes, sir.

Q. How long were you gone to your meals?—A. About an hour.

Q. At noon, or when?—A. At noon.

Q. He took your place when you were gone?—A. Yes, sir.

Q. When it came 5 o'clock you began the count and continued it?—A. Yes, sir; until we finished the count.

Q. What time?—A. It was after 11 o'clock.

Q. Then what did you do?—A. We placed all the books and the ballots in the ballot box, and sealed them and locked them and carried them to the council chamber.

Q. All the books?—A. All, except the registration book.

Q. They were locked in the box?—A. Yes, sir.

Q. Where did you put the box?—A. In the council chamber; in the back part of the room.

Q. Was the council chamber locked that night?—A. I don't know.

Q. Did you help take the box up there?—A. Yes, sir.

Q. Was it left in anybody's charge in particular, except as put in the council chamber?—A. That is all.

Q. And was there until the next morning?—A. Yes, sir.

Q. What time did you reassemble?—A. I think about 8 o'clock.

Q. What did you do with the ballot box then?—A. We opened it.

Q. And took out what?—A. We took the book that was necessary to make out the statement to the county clerk and the judge of probate.

Q. Who was present when you opened the box?—A. I think some of the inspectors; whether they were all there or not I don't know.

Q. Who do you remember was there?—A. Mr. Shields and Mr. Clark, I think.

Q. Who had the key?—A. I think Mr. Steinfellow generally keeps the key.

Q. Have you any individual recollection of it?—A. No, sir.

Q. Was the box sealed when you closed it the night before?—A. Yes, sir.

Q. You broke the seal and got those books?—A. Yes, sir.

Q. I show you Exhibit 70. Look at that book, which purports to be a statement book of that ward; do you recognize that signature there?—A. Yes, sir.

Q. Which one, the last one?—A. Yes, sir.

Q. When did you sign that?—A. The 5th day of November.

Q. That is the date, but is that the time you actually signed it?—A. I think it is.

Q. What did you do with the books in the morning there when you came back; what was there to do to this statement book?—A. We had to complete the statement to the clerk, and it takes considerable time.

Q. What was it you did? Look it through, and see what work you did there that morning when you reassembled at 8 o'clock; did you fill in the statement; is that what you mean?—A. I think we did.

Q. Did you sign them before you filled them in, or afterwards?—A. I think we must have signed them before.

Q. You signed the certificate there before you filled it in?—A. Yes, sir.

Q. What did you fill in, the words and figures both?—A. I think we did.

Q. Where did you get those from?—A. We got them from the tally sheet.

Q. You got them from Exhibit 71?—A. I think so.

Q. Now, as I understand it, you came back there about 8 o'clock in the morning?—A. Yes, sir.

Q. From the tally sheet book you made up your statement book?—A. Yes, sir.

Q. But the statement book had been signed before?—A. Yes, sir.

Q. Before you knew, of course, what the result of the election was?—A. Yes, sir.

Q. You had signed them up for convenience and filled them in afterwards?—A. Yes, sir.

Q. As a matter of fact—I will show you a certificate dated November 5.—

A. Yes, sir.

Q. But as a matter of fact the book was not made, really filled in until the 6th?—A. You will understand that we were busy during the election and we put in just as much in this book as we had time to put in on the day of the election, and the next day we finished what we had not completed the day before.

Q. About what did you put in the day of the election?—A. I couldn't tell how much of this was written in on the day of the election, but we put in all we possibly could.

Q. You couldn't write in the figures until you got them?—A. No, sir; not until the ballots were counted.

Q. You didn't do that until the next day?—A. We counted the ballots that night.

Q. You could not make that statement book until your tally book was completed?—A. No, sir.

Q. When you got your tally-sheet book completed that was the time you went home and went to bed, was it not, and made out your statement book the next morning?—A. Yes, sir.

Q. I call your attention to the tally-sheet book to Representative in Congress, third district, and call your attention to page 12, read the vote for John M. C.

Smith and Claude S. Carney, the totals just.—A. Total straight votes for John M. C. Smith, 29; total split votes for John M. C. Smith, 45; total of votes received for John M. C. Smith, 74. Claude S. Carney, total straight votes for Claude S. Carney, 113; total split votes for Claude S. Carney, 36; total votes received for Claude S. Carney, 149.

Q. Claude S. Carney received 75 plurality over John M. C. Smith?—A. Yes, sir.

Q. Now, what were those tallies and figures, just take this tally-sheet book and tell me what the tallies were made with, a pen or pencil?—A. With a pencil.

Q. Also the straight votes and split votes and total votes, what were they made with?—A. With a pencil, too.

Q. Does that tally-sheet book show where the 45 split votes for John M. C. Smith came from? Are there 45 tallies opposite his name?—A. Yes, sir.

Q. Claude S. Carney, he received 36 split votes; are there 36 tallies there?—A. Yes, sir.

Q. The city clerk didn't fix up that book with the "add" and "deduct" system?—A. No, sir.

Q. This tally-sheet book, Exhibit 71, the straight votes are in one column and the split votes in another?—A. Yes, sir.

Q. And the tallies themselves show how many split votes there were?—A. Yes, sir.

Q. This poll book, Exhibit 72, shows the affidavits you made that day, I mean the board?—A. Yes, sir.

Q. Which clerk made that, can you tell?—A. Mr. Shields.

Q. Now, who purports to have sworn the inspectors of election there?—A. Walter M. Watson.

Q. Does that page show in what character he swore them in, whether as notary public, justice of the peace, or inspector, or supervisor? Is there any character of office after his name?—A. No, sir.

Q. Turn to the oath of the clerk of election, who apparently swore the clerks?—A. Walter M. Watson.

Q. Is there anything to show the character of his office?—A. No, sir.

Q. I will show you Exhibit 73, the statement book, and call your attention to the certificate on the last page. Who signed that?—A. L. J. Shields, Charles P. Ricker, and Albert H. Laberteaux.

Q. Your name does not appear there?—A. No, sir.

Q. Was Mr. Ricker an inspector?—A. Yes, sir.

Q. Did you have five inspectors?—A. No, sir.

Q. You were an inspector?—A. Yes, sir; I understand that the clerk of election is also an inspector of election; Mr. Ricker and Mr. Shields acted as clerks.

Q. What office does Mr. Riker hold in the city?—A. He was elected by the electors present that morning.

Q. For what?—A. He was elected by the council, Mr. Shields was.

Q. To what?—A. To act as inspector, and Mr. Riker was elected on the morning of the 5th by those present.

Q. Mr. Shields was elected by the council to act as what?—A. Inspector.

Q. Mr. Riker was elected by the bystanders for what?—A. As an inspector of election.

Q. We will come down to Albert L. Laberteaux.—A. Yes, sir.

Q. What office does he hold?—A. Alderman.

Q. Then Frank L. Simeon?—A. He was alderman.

Q. You really had five men as inspectors?—A. Yes, sir.

Q. You simply inadvertently did not sign that?—A. There is no line for any further names.

Q. Do you remember why you didn't?—A. No, sir.

Q. You virtually had five inspectors?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. Some of the inspectors acted as clerks?—A. Yes, sir.

Q. This Mr. Nelson, what was he?—A. A justice of the peace.

Q. Now, when you got through on the night of the 5th your tally-sheet books were complete?—A. Yes, sir.

Q. You had got done with the tallying?—A. Yes, sir.

Q. And found out how many straight votes and how many split votes and the total votes and announced it publicly?—A. Yes, sir.

Q. Whatever each man received was announced publicly when you got through?—A. Yes, sir.

Q. You say the tally-sheet book, with all the other books, were put in the ballot box and locked up and a seal put on it?—A. Yes, sir.

Q. And took the box over to the council room?—A. Yes, sir.

Q. So when you got through there that night, before you quit the voting place, you knew just how many votes each man had received; you had it on record in that tally-sheet book?—A. Yes, sir.

Q. The next morning when you came back you took this same tally-sheet book out of the ballot box, I understood you to say?—A. Yes, sir.

Q. From the tally-sheet book from which you had determined the vote for each candidate the day before, the same tally-sheet book you had put in the ballot box and locked up and sealed in there, you put the figures on this statement book?—A. Yes, sir.

Q. What do you say as to whether these figures in the statement books which have been shown you correctly show the votes received for the several candidates there at that election of November 5, 1912?—A. I think they do.

Q. With reference to the office of Representative in Congress, John M. C. Smith and Claude S. Carney, what do you say as to whether the figures you read off the statement book correctly show the votes received by Claude S. Carney and John M. C. Smith, respectively, straights and splits at the November 5, 1912, election?—A. I think they do.

Redirect examination by Mr. FRANKHAUSER:

Q. I will ask you what your politics are?—A. I am a Democrat.

Q. Mr. Culver, was he a Democrat?—A. Yes, sir.

Q. Mr. Bemer a Democrat?—A. No, sir.

Q. What is he?—A. Progressive Republican.

Q. The city clerk is what?—A. A Democrat.

Q. Out of the four witnesses we have had from Albion none are at present Republicans as you understand it?—A. Mr. Bemer, I believe, at that time was acting in the capacity of a Republican.

Q. You say he is a Progressive now?—A. Yes, sir.

Q. We have had no witnesses here from Albion to-day who is a Republican at the present time?—A. No, sir.

Q. Three of them are Democrats?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. Mr. Laberteaux, was he a Republican or a Democrat?—A. He is a Republican.

Q. This man Loud, is he a Democrat or a Republican?—A. A Republican.

Q. This man Conrad, what is he?—A. A Republican.

Q. This man Knowlin?—A. He is a Democrat.

Q. And Baker?—A. A Democrat.

Q. Mr. Keck?—A. He was a Republican.

Q. George R. Carver, what is he?—A. A Democrat.

Q. M. D. Weeks?—A. A Republican.

Q. Weeks and Keck, did they fill in this statement book?—A. Yes, sir.

Q. F. L. Smith, what was his politics?—A. A Democrat, I think.

Q. Mr. Weeks and Mr. Keck, both Republicans, filled in this statement book?—A. Yes, sir.

Redirect examination by Mr. FRANKHAUSER:

Q. These other names that Judge Adams read to you have not been here as witnesses to-day?—A. No, sir.

Mr. ADAMS. The witness we agreed to take up without notice I understand you do not desire to call.

Mr. FRANKHAUSER. No; we do not desire to call him.

APRIL 8, 1913.

JAMES B. CHASE, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Chase, where do you reside?—A. Kalamazoo, Mich.

Q. What is your age?—A. Forty.

Q. What is your occupation?—A. I am employed by the Harrow Spring Co.

Q. Were you present at the general election held on the 5th day of November, 1912, in the seventh precinct of the city of Kalamazoo, Kalamazoo County, Mich.?—A. Yes, sir.

Q. Did you hold any official position with the board of election inspectors?—A. I was chairman.

Q. What office do you hold, if any, in the city?—A. Nothing only deputy sheriff, that is all.

Q. Were you there when the board was organized on that election day?—A. Yes, sir.

Q. Did you take the constitutional oath of office?—A. Yes, sir.

Q. How long were you present at the polls that day?—A. Well, I think from 6.30 a. m. until 2 a. m. the next morning. I wouldn't say exactly, but thereabouts.

Q. Were you present all day?—A. Yes, sir.

Q. Did you leave the polls at all?—A. Why, do you mean the room?

Q. The room—the polling room?—A. Yes, sir; I left that; was down to the lavatory perhaps half a dozen times.

Q. Did you go to your meals that day?—A. No, sir; the meals were served there.

Q. When did the polls close that day?—A. At 5 o'clock.

Q. Did you begin counting the ballots immediately?—A. Yes, sir.

Q. How long were you engaged in that work?—A. Well, from 5 o'clock until somewhere in the neighborhood of 2 o'clock the next a. m.; I wouldn't say exactly. We stopped for supper.

Q. Where did you have your supper?—A. Right there in the same room where the clerks were located.

Q. How many were engaged as inspectors of the election?—A. I am not positive, but I think eight. There were two door tenders or gatekeepers, but I couldn't say exactly; I think eight.

Q. In all?—A. Yes, sir.

Q. What part did you take?—A. I received the ballots.

Q. Did anyone initial the ballots?—A. Yes, sir.

Q. All of them?—A. Yes, sir.

Q. What was the railing surrounding that booth?—A. The railing that surrounded the booths?

Q. Yes; what was it?—A. There was no railing at all. The booths had doors. We were in a separate room from where the booths were.

Q. You were in the room where they were initialing?—A. No, sir; a separate room.

Q. Could you see the booths from where you were?—A. Not without getting up from my chair. Some of us could. The man that gave the ballots out could, but the rest of them could not without getting up off their chairs.

Q. How did they see them, through the door?—A. Through the window—practically a door—a half window.

Q. When you gave the ballots to the voter where did he go?—A. I didn't give the ballots to the voter. The man who did he went in the booth and came out and delivered it to me.

Q. By whom was the ballots delivered to the voters?—A. I think W. E. Geary.

Q. Did anyone else receive ballots there that day?—A. Only during meal hours.

Q. Who did?—A. I couldn't say. We all took turns at the box.

Q. The whole eight of you?—A. Yes, sir.

Q. Was there anybody in that booth that day aside from the inspectors?—A. Well, yes; the city clerk was in there, and the city attorney was in there two or three different times.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, there being no allegation of that kind in the contestee's answer that would warrant the introduction of any such testimony under the issue.

A. (Continuing.) There were several there. I couldn't say just who they were now, but different ones came into the back door. There is a front and a rear door to this precinct. I couldn't say now, but several different ones looking after their candidates there, who had voted and who had not.

Q. There was nothing to hinder their coming right in?—A. No, sir; the doors were not locked.

Q. Do you know of anybody aside from the inspectors who handled ballots?—A. No, sir; I do not; not at that election.

Q. During the day?—A. Not at that election.

Q. Do you know a woman named Miss Marsh?—A. Yes, sir.

Q. Was not she present and didn't she hand out ballots?—A. I may be mistaken, but it seems to me she was there in the spring but not in the fall—she was there in the fall, I think.

Q. At the November election?—A. Yes, sir; that is when she was there, and also Mrs. Oldfield.

Q. They were handing out ballots to the voters in that precinct, were they not?

Mr. ADAMS. I object to that as leading.

A. I think—I am not positive—I think that Miss Marsh and Mrs. Oldfield did fold ballots two or three different times and did hand them out for Mr. Geary.

Q. Was he an inspector?—A. He was the man that gave out the ballots; yes, sir.

Q. You say that you finished counting along about 2 o'clock in the morning?—

A. About that time; yes, sir.

Q. As near as you can tell?—A. As near as I can tell; yes, sir.

Q. When did you commence making out the returns, after you commenced counting the ballots?—A. Yes, sir; we couldn't make them out before.

Q. Did you adjourn before they were made out?

Mr. ADAMS. We object to that as incompetent, irrelevant, and immaterial, there being no such an allegation in the answer.

A. We made them out right then and there; as soon as we finished counting we made out our report.

Q. The whole eight of you signed this?—A. I think so; yes, sir.

Mr. ADAMS. We object to the question as incompetent and not the proper or best evidence; the records or returns will show who signed them and can not be shown by parole.

Q. Witness, during the election that day, do you know of any voters who asked for assistance to have their ballots marked?—A. Do you mean by name?

Q. No.—A. I remember of two or three, I will not say positively which.

Q. Do you remember of any more than that?—A. No, sir; I do not.

Q. Did they receive assistance?—A. Yes, sir.

Q. In marking their ballots?—A. Yes, sir.

Q. Who assisted them?—A. I think W. E. Geary did and B. O. Bush did, and it might be possible J. E. Walton.

Q. Was he another of the inspectors?—A. Yes, sir.

Q. Were there any challengers from the parties in this precinct?—A. If there were I didn't hear of any.

Q. No challengers for either of the parties?—A. Not that I know of; no, sir. They didn't make themselves known if they were there.

Q. Did you hear any oath administered to any voter before receiving assistance in marking his ballot that he was unable to read the English language or incompetent to mark his own ballot?—A. No, sir; I did not.

Q. Did you hear any oath administered to any voter that day previous to receiving his ticket?—A. Only over that he was unable to register or something like that; that is all.

Q. In regard to his registration?—A. Yes, sir; entirely as to his registration.

Q. That is the only oath you heard administered?—A. That is all I remember of.

Cross-examination by Mr. ADAMS:

Q. Who applied for instructions that day?—A. I don't remember.

Q. How do you remember they did?—A. The people walked in.

Q. If you can remember two or three came in, tell us who they were.—A. I can't remember the names.

Q. Give us the name of one.—A. I can't.

Q. You couldn't name one?—A. No, sir.

Q. Not a single one?—A. No, sir.

Q. There was not more than one, as a matter of fact, came in there that day?—A. I said two or three.

Q. There was not, as a matter of fact, more than one came in there for instructions that day?—A. I said I didn't know; I said I didn't know, there might have been two or three.

Q. Was it more than one?—A. I couldn't say.

Q. You don't know?—A. No, sir.

Q. Was there not one man who came in and applied for instructions, and was not that J. C. Smith?—A. I can't remember the names.

Q. A blind man?—A. I couldn't say.

Q. You don't know whether they were blind, any of them who did come in, if more than one came in or not, do you?—A. I know there were two or three: I couldn't say positively.

Q. You can't tell the name of a single one?—A. No, sir.

Q. What kind of looking men were they?—A. I couldn't say.

Q. You can't remember that?—A. No, sir.

Q. What kind of clothes did any one of them have?—A. I couldn't say.

Q. What kind of hats?—A. I couldn't say.

Q. What kind of a looking man was any one of those two or three that came in there and applied for instructions?—A. I couldn't say.

Q. You don't know where they live?—A. No, sir.

Q. Did you ever see them before?—A. Possibly.

Q. Well, did you?—A. I don't know.

Q. I don't care about "possibly;" did you?—A. I don't know.

Q. Have you ever seen either of them since?—A. I don't know as to that.

Q. You were receiving ballots?—A. Yes, sir.

Q. You say that B. O. Bush and W. E. Geary went in the booth with the men?—A. Or Mr. Walton; one or the other.

Q. What time in the day did any of those men come in for instructions?—A. I couldn't say as to that.

Q. You don't know?—A. I couldn't say as to that.

Q. In the morning?—A. I don't know.

Q. In the afternoon?—A. I don't know.

Q. After 5 o'clock?—A. Not after 5 o'clock.

Q. Did they come in after 5 o'clock for instructions?—A. The polls were closed at 5 o'clock.

Q. Did they?—A. No, sir.

Q. Were they white or black?—A. I couldn't say.

Q. Can you give a description of anyone you saw in there that day who applied for instructions?—A. I told you no, I could not.

Q. Any sort of a description?—A. I told you no, I could not.

Q. You can't tell whether they were colored men or white men?—A. No, sir; nor blind or deaf.

Q. They might all have been blind as far as you know?—A. No, sir.

Q. How do you know, if you don't know who they were or how they were dressed or who they were, how can you tell whether they were blind or not?—A. I say I don't remember.

Q. I say you can't say now whether they were blind or not?—A. No, sir; I can't.

Q. They may all have been blind?—A. No, sir.

Q. What do you mean?—A. I remember of their being there.

Q. We are talking about those you have stated came in and applied for instructions.—A. They may all have been blind or deaf, for all I know.

Q. You didn't have anything to do with giving them instructions?—A. No, sir; not a thing.

Q. You understand that if a man is physically disabled that he didn't have to have an oath administered to him?—A. No, sir; I did not.

Q. You didn't know that?—A. No, sir.

Q. You were chairman of the board over there?—A. Yes, sir.

Q. And you didn't understand that to be the law?—A. No, sir.

Q. Didn't you as an inspector of the election look up the law a little before you began to act on the board?—A. When we have occasion to; yes, sir.

Q. Did you have occasion to do it before you began to act?—A. There were older men there than I was, and I took their word for it.

Q. You said you were chairman?—A. Yes, sir.

Q. Who elected you chairman?—A. Why, through Mr. Martin, the alderman of the ward.

Q. The alderman of the ward?—A. Yes, sir.

Q. Was he on the board?—A. No, sir.

Q. He made you chairman?—A. Yes, sir; I went to the city clerk and was sworn in.

Q. Where were you sworn in?—A. At the city clerk's office.

Q. You didn't know, and don't know now, do you, what the law was relative to the giving of instructions to people who came to the voting place that election day to vote, did you?—A. No, sir; I don't pretend to know anything about it.

Q. You were a Republican November 5, 1912?—A. Did I vote on the Republican ticket?

Q. You were a Republican in politics?—A. Yes, sir.

Q. Mr. Martin was a Republican?—A. Yes, sir.

Q. You said there were eight inspectors?—A. Eight altogether, with the gatekeepers or doorkeepers.

Q. How many inspectors did you have?—A. I think six in the room.

Q. You don't mean they were all inspectors, do you?—A. No, sir; clerks, some of them; I will not say whether three or four; I don't know.

Q. Three or four inspectors?—A. Yes, sir; I don't know.

Q. The rest were clerks and gatekeepers?—A. There were eight employed. I think.

Q. That election was conducted in a fair manner that day?—A. As far as I know.

Q. J. E. Walton, did he act as clerk or inspector that day?—A. I think he did; I will not swear to it; I think he did.

Q. You stated that Miss Marsh was there and Mrs. Oldfield?—A. I didn't say Miss Marsh; it was either in the spring election or fall; I don't remember which.

Q. You are not sure about that?—A. No, sir.

Q. You are not sure that either of those ladies were there at the November 5, 1912, election?—A. No, sir; I don't know that; I may be mixed up in the spring; I worked there several times; I don't remember.

Q. You say there were no challengers there?—A. Not that I know of; no, sir. If they were they didn't make themselves known.

Q. Did the Republican Party have any challengers in there?—A. Not that I know of.

Q. Were not those fellows who came in there occasionally through that outside door to see how things were going?—A. I don't know; they may have been; but they didn't make themselves known as challengers.

Q. You knew at the time who they were that came in?—A. Yes, sir; Democrats as well as Republicans and Progressives.

Q. Representatives of all the parties were present?—A. Yes, sir.

Q. They didn't take any part in the conduct of the election?—A. No, sir; not at all.

Q. They had nothing to do with the ballots received or handing them out or marking them?—A. No, sir.

Q. As far as you know, those who did come in there, aside from those who were on your board, were challengers for some of the political parties?—A. They may have been, for all I know.

Q. The Progressive Party had a ticket in the field at that election?—A. Yes, sir.

Q. And the Socialist had?—A. Yes, sir.

Q. And the Democrats had a ticket?—A. Yes, sir.

Q. And the Republicans?—A. Yes, sir.

Q. And the Prohibitionists?—A. I can't say whether they had a full ticket or not.

Q. And the Socialist Labor?—A. Yes, sir.

Q. There were six or seven political parties represented on the ballot that was voted there that day at that election on November 5, 1912?—A. Yes, sir.

Q. As far as you know, those men who came in there may have been challengers?—A. In the rear door?

Q. Yes, sir; of some one or more of those political parties?—A. They may have been, for all I know; they didn't make themselves known in any way what they wanted only to ask—

Q. None of them took any part in the election?—A. No, sir; none whatever.

Redirect examination by Mr. MAYNARD:

Q. You don't know that they were challengers for either of the parties, do you?—A. No, sir.

Q. You say they came in there; what did they do when they came in?—A. They walked in and asked—I can't tell you what his name is—who had voted, if this man had voted, and they looked it up and said "No," and he would put that on a piece of paper and go out. They might have been challengers; I don't know.

Q. Do you remember whether the woman-suffrage question was up at the last November election or not?—A. No, sir; I do not; I don't remember whether in the spring or in the fall.

Q. Now, at the time that Mrs. Oldfield and Miss Marsh were there, was that the election at which the question of woman suffrage was submitted?—A. Yes, sir; certainly, they would not have been there if it hadn't been.

Recross-examination by Mr. ADAMS:

Q. Was this Miss Marsh or Mrs. Marsh?—A. I don't know whether Miss or Mrs.

Q. She is a teacher at the normal school?—A. I don't know as to that.

Q. You know her?—A. I have heard of her; I don't know whether Mrs. or Miss.

Q. It was Mrs. or Miss Marsh, who was connected with the normal school?—A. I think so.

Q. Who was Mrs. Oldfield?—A. The wife of Mr. Oldfield, of Williams & Oldfield.

Q. An estimable and reputable lady?—A. As far as I know; yes, sir.

Q. John M. C. Smith had somebody up there around the polls working for him?—A. I couldn't say.

Q. Don't you know he had?—A. No, sir; I couldn't say.

Q. Who came to see you about what you might know about this election prior to to-day?—A. No one came to see me.

Q. Were you not subpoenaed?—A. Mr. Shields subpoenaed me.

Q. Did Fred Stanley come and interview you?—A. No; he sent for me.

Q. Did you go up and see him?—A. Yes, sir.

Q. You saw him at his office?—A. Yes, sir.

Q. Mr. Stanley is a young Republican lawyer in this city?—A. I can't say whether he is a Republican or not.

Q. Don't you know he is?—A. No, sir; I do not.

Q. He was a candidate on the Republican ticket last fall?—A. He may have been; I don't know; he wrote me a letter; I don't know honestly whether he was or not.

Q. He ran for circuit court commissioner at the November 5, 1912, election?—A. If that is true, he did; I don't know.

Q. Is Fred Stanley the only man you have talked with about this case, since this controversy, I mean, between Mr. Carney and Mr. Smith, since November 5 election, 1912?—A. I think so, outside of Mr. Carney, last evening, or Sunday evening, I should say.

Q. Mr. Carney didn't talk to you anything about the facts in this case, did he; you asked him; you wondered what they wanted of you up to Fred Stanley's office?—A. No, sir; I didn't say anything about Stanley's office; I said I was called up; he called me up and asked me what I knew, and I made a sworn statement or made a statement, and he asked me whether I would swear to it, and I said yes.

Q. That is what you and Stanley talked?—A. Yes, sir. Then Mr. Carney asked me, "Did I carry that precinct?" I said, "I think you did."

Q. Have you a copy of that statement you made?—A. No, sir.

Q. You signed something up there and swore to it, did you?—A. Yes, sir.

Mr. ADAMS. You haven't a copy of that, have you, gentlemen?

Mr. MAYNARD. I have not.

Q. Is that the only sworn statement you have made about this election, the one you made for Mr. Stanley?—A. Yes, sir.

Q. When were you up to Mr. Stanley's office?—A. I couldn't say.

Q. How long ago?—A. Oh, I should say three months, possibly longer.

Q. About three months ago?—A. Maybe longer and maybe less than that; I don't remember exactly.

Q. That is the only time you have been up there to make a statement to Mr. Stanley?—A. Yes, sir.

Q. Concerning this matter?—A. Yes, sir; I think it is.

Q. About three months ago or longer?—A. Yes; and it might be less than that.

Q. If any less than that, how much less?—A. I don't know.

Q. You can't remember?—A. No, sir.

Q. Your memory isn't very good, then?—A. Oh, sometimes; I don't know anything about that.

W. M. HUNTLEY, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Huntley, where do you reside?—A. In Cooper.

Q. The township of Cooper, Kalamazoo County, Mich.?—A. Yes, sir.

Q. What is your age?—A. I am 38.

Q. What is your occupation?—A. I am a farmer.

Q. Do you hold any official position in the township?—A. I did last year.

Q. What was it?—A. Clerk.

Q. Were you present at the election polls, the voting place at the general election held on the 5th day of November, A. D. 1912, in the township of Cooper, Kalamazoo County, Mich.?—A. Yes, sir.

Q. How many inspectors of election were there?—A. I think four; I am not sure.

Q. Do you remember who they were?—A. J. B. Crane, J. W. Huntley, and John Van Alstrum.

Q. Mr. Crane, what position did he hold?—A. Supervisor.

Q. Mr. Huntley?—A. Justice of the peace.

Q. Mr. Van Alstrum?—A. Justice of the peace.

Q. Was there another?—A. I think R. S. Wilcox.

Q. What was he?—A. Justice of the peace.

Q. Did you act as clerk of that election?—A. Yes, sir.

Q. Anyone else with you?—A. Mr. Seaman.

Q. You had two clerks, yourself and Mr. Seaman?—A. Yes, sir.

Q. And four inspectors?—A. Yes, sir.

Q. You were all behind the railing, were you?—A. Yes, sir.

Q. Did you have anybody else there?—A. No, sir.

Q. Now, witness, did anybody initial the ballots that day?—A. Yes, sir; Mr. Crane.

Q. The supervisor?—A. Yes, sir.

Q. Did he initial them all?—A. I think so; I don't know; I didn't see them all.

Q. Did you hear anyone apply for assistance there in that precinct, for assistance in marking their ballots?—A. I don't think so; no, sir.

Q. Were you there all day?—A. Yes, sir.

Q. Did you see anyone assist any person in marking their ballot?—A. No, sir; I did not.

Q. Did you see a grandson come in with his grandfather and go into the booth with him and mark his ballot for him?—A. I think it was Mr. Thayer, I am not sure. He couldn't walk very well, and I think his nephew went through with him.

Q. His relative went with him?—A. Yes, sir.

Q. Do you know whether anyone went in the booth with him?—A. No, sir; I don't know about that either; I am not sure whether he did or not or he went in alone.

Q. Was your board required to go before the board of county canvassers and recount the ballots from that township?—A. Yes, sir.

Q. Did you go with them?—A. Yes, sir.

Q. Did you see those ballots when they were recounted here?—A. Yes, sir.

Q. It is true that those ballots were not initialed?

Mr. ADAMS. Objected to as incompetent and immaterial; they can not show by parol evidence the condition of those ballots in the ballot box from anything that was gathered there when they were opened up, and I object to it further as an attempt to cross-examine their own witness, and there is no mention made of it in the notice, and the only question in the notice that they are entitled to go into here is the question of instruction to voters, and I object to their going into any other subject or ask any questions bearing upon any other subject as incompetent and immaterial and not covered by the pleadings.

(Question read.)

A. I think they were.

Cross-examination by Mr. ADAMS:

Q. Mr. Huntley, as I understood you to say, you don't know whether Mr. Thayer—young Thayer—went through with his father?—A. With his grandfather.

Q. You don't know whether he did or not?—A. I think he did.

Q. You knew the grandfather?—A. Yes, sir.

Q. How old a man was he?—A. About 80, I think, or more.

Q. Was he physically feeble; noticeably so?—A. Yes, sir.

Q. What seemed to be observable; what did you observe there that day about his condition?—A. He couldn't walk very well.

Mr. MAYNARD. I object to that as incompetent and immaterial; there is nothing in the law that permits an outsider to go in the booth and mark a ballot without the presence of an inspector.

Q. When Mr. Thayer was in the booth, didn't a couple of the inspectors of your board go to the booth when Mr. Thayer was in there?—A. I couldn't say whether they did or not.

Q. They may have done it?—A. Yes, sir.

Q. While the old gentleman Thayer was in there marking his ballot, it is possible that a couple of the inspectors of your board went to the booth where Mr. Thayer was marking his ballot?—A. I will not say; I couldn't see through the booth.

Q. Didn't the boy stay on the outside of the booth; just take his father and help him to the booth?—A. I don't know about that, either.

Q. You don't know whether the boy went into the booth or not, do you?—A. I saw him go out through the booth with him; that is all; through the back side.

Q. When the father marked the ballot, the boy might have been outside of the booth on the other side?—A. Yes, sir; he may have been; I don't know.

WILLIAM W. ALLEN, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Allen, where do you reside?—A. Texas Township, this county.

Q. What is your age?—A. I am 60 years old.

Q. What is your occupation?—A. I am a farmer.

Q. Were you present at the general election held in the township of Texas, county of Kalamazoo, Mich., on the 5th day of November, A. D. 1912?—A. Yes, sir.

Q. Did you have an office on the board of election inspectors?—A. Yes, sir.

Q. What was it?—A. I was one of the inspectors.

Q. What township office do you hold?—A. Justice of the peace.

Q. Who were the other inspectors?—A. Charles Ray.

Q. What was he?—A. He was also a justice of the peace.

Q. Who else?—A. In the capacity of inspector or on the board?

Q. Was the supervisor there?—A. Yes, sir; he was the chairman.

Q. What was his name?—A. William Campbell.

Q. Any other inspector of election?—A. Frank Harrison was one of the clerks.

Q. Who was the township clerk?—A. Lewis Burdick, jr.

Q. What time did you open the polls?—A. Very close to 7 o'clock.

Q. Were you at the polls all day?—A. Yes, sir; I was there.

Q. What time did you close the polls?—A. I think not far from 5 o'clock.

Q. Did you leave the polls at all?—A. For dinner.

Q. Did the board adjourn?—A. They adjourned for one hour, I think, for dinner.

Q. Where did you have your dinner?—A. In the basement of the church.

Q. How far from there?—A. Oh, about 6 or 8 rods.

Q. Did you all go together?—A. Yes, sir.

Q. What did you do with the election books while you went to dinner?—A. The box with the ballots was sealed, and there was a man left in charge of the town hall.

Q. Who was he?—A. I couldn't tell you who it was.

Q. He was not one of the board?—A. I think not; I think not one of the election board.

Q. You got some other man?—A. Well, I spoke to Mr. Campbell about it, if there was anyone there, and he said there was.

Q. You don't remember yourself who it was?—A. No, sir; I don't remember who he was.

Q. What did you do with the ballots?—A. They were left there in the voting precinct.

Q. On the table?—A. No, sir; they were—that were not used, do you mean?

Q. Yes. We are talking about the noon adjournment now.—A. I think they were left on the table. I will not say for certain about that, but I think so.

Q. What time did your board get back?—A. Very close to 1 o'clock.

Q. What did you do then?

Mr. ADAMS. I object to this line of testimony as inadmissible under the answer of the contestee and as incompetent and irrelevant, and to any and all testimony upon any other subject save that of instructions claimed to have

been given to voters who applied for assistance, that being the only subject covered by the answer, and I object, therefore, to any testimony on any other subject, as far as the Kalamazoo County precincts are concerned, as incompetent, irrelevant, and immaterial and inadmissible.

Mr. MAYNARD. I wish to state the following for the record: When the contestant began taking his testimony a like question came up relating to evidence not included in the notice of contest, and objection was made by the contestee that it was immaterial for the reason that no notice was given of any such matter in the notice of contest; and Mr. Adams stated: "We will give you notice now that any facts that develop in the taking of this testimony or any other testimony on behalf of the contestant that we shall apply for an amendment to the petition. You can therefore prepare yourselves to meet the facts presented." We objected to the taking of the testimony as entirely outside of the notice of contest. Now we propound the same questions, and they are objected to. I stated that I understood and it was the understanding of the contestee that the parties were strictly limited by the statute and the rules governing such cases, and in answer thereto that neither party had a right to amend; but the contestee, realizing that he is liable to be mistaken as to the admission of testimony not covered by the contest made here and that any irregularities, errors, or defects in the election returns and records affecting the election which is contested, wish to say that any errors, defects, mistakes, or irregularities in the returns and records or any act of any election board or any officer that has been shown by the contestant to invalidate the election of the contestee, the objection affecting any election precinct on some ground of error, defects, mistakes, irregularities, or action of the officers existing, whereby the votes in such precinct, where the contestant received a plurality, should be rejected. We therefore give the contestant notice that any new facts that develop in the taking of this testimony or any other testimony in behalf of the contestee that we shall apply for an amendment to the answer to the notice of contest. You can therefore prepare to meet the facts presented that are mentioned or set forth in the answer to the notice of contest. The contestee only asks fair play and at the same time that the same rules may be applied to his proofs as to the proofs of the contestant, as to facts not covered by the answer, as to the facts offered by the contestant not covered by the notice of contest and of which the contestee was not apprised until he heard the testimony, and, of course, could not have met it by his answer.

Q. What time did you close the polls?—A. I think about 5 o'clock.

Q. Did you go to supper?—A. Yes, sir.

Q. Before or after the polls closed?

Mr. ADAMS. If it can be understood that my objection applies to all the testimony that is not covered by your answer I will not make the specific objections.

Mr. MAYNARD. Any objections you may make to the testimony I am introducing which is not covered by the answer is objected to on the ground that it is incompetent, irrelevant, and immaterial may apply to all the testimony here in Kalamazoo under this notice.

Q. Before or after the polls closed?—A. We went to supper after the polls were closed.

Q. Before you had made your count?—A. Yes, sir.

Q. How far had you proceeded before you went to supper?—A. I couldn't tell you exactly how far.

Q. You had opened up the ballot box and taken out the ballots?—A. I could not say positively about that, I think so, but I would not say positively about that.

Q. When you went to supper who went?—A. I think the board all went together.

Q. All went together?—A. Yes, sir.

Q. When you went out that time what did you do with the polling place?—A. If I remember right about that after the ballot box was opened it was resealed, but I am not certain. At least it was sealed when we left, behind our railing. I speak more from our general rule than my specific memory in this particular case or instance; we have been very careful about keeping the ballot box sealed when we left at all.

Q. When you came back from supper did you proceed with the count?—A. Yes, sir.

Q. When did you get through?—A. Well, I think some time just a little before midnight, if I remember rightly; something not far from 11 o'clock, pos-

sibly a little later than that; that is including signing and bringing up the records.

Q. Did you make out the records that night?—A. Yes, sir.

Q. While you were there through the day did you see any voters ask for assistance in marking their ballots?—A. I did.

Q. How many?—A. Two that I remember distinctly.

Q. No more than two?—A. I think there were more, but I will say two positively.

Q. Were you acquainted with them?—A. Yes, sir.

Q. Did they receive assistance?—A. Yes, sir; they did.

Q. Who gave them assistance?—A. I did.

Q. They were people you knew?—A. Yes, sir.

Q. They were afflicted with some infirmity?—A. Mr. Ward was a man who was mentally defective, was not able to read very much, if any at all.

Q. What was the other?—A. The other one was a man I should say between 90 and 100, very competent otherwise, but not able to see to read at all.

Q. So he was not able to read?—A. Well, I am quite well acquainted with him and know that to be a fact.

Q. The other man assisted, what was there about him?—A. Mental weakness.

Q. Did you know him?—A. Yes, sir; he lived with me one year.

Q. You say there were others received assistance there?—A. I think so. There were one or two more, but I will not say positively.

Q. Those who were assisted by anyone else at other times, did you see any oath administered to them?—A. No, sir.

(Cross-examination by Mr. ADAMS:

Q. Were all those who were rendered any assistance there that day in the matter of voting and marking their ballots there that day noticeably physically disabled?—A. Why, it was very noticeable that one was blind or very nearly so.

Q. You knew him to be?—A. Oh, yes.

Q. Now, that was the old gentleman?—A. Yes, sir.

Q. This man Wood was he physically affected in some way?—A. No, sir; I think not; he was quite a rugged fellow.

Q. Did you see him mark his ballot?—A. Yes, sir; I did.

Q. Did anybody else see it when he marked it besides you?—A. I think not.

Q. Did he mark it himself?—A. Yes, sir.

Q. What instructions did you give him?—A. He named the ticket he wanted to vote, and I simply placed my finger upon the ticket and says, "That is the ticket, Rolla, you want to vote."

Q. Did you tell him the ticket he pointed out?—A. The one he named I pointed out to him.

Q. Did he vote that ticket?—A. Yes, sir.

Q. Now, did I understand you to say more than those two received assistance there that day?—A. I will not say there were, but my mind is that there were one or two more, but I couldn't remember distinctly about that.

Q. You don't want to be understood as testifying that there were more than those two?—A. No, sir; not positively.

Q. And you don't know but there were? You don't recall any of the circumstances about anybody else but those two?—A. Not plainly. Of course I have a little idea, but then I would not—

Q. You may have confused that with some other time possibly?—A. With the spring election.

Q. You stated that your board left the voting place at noon for dinner?—A. Yes, sir.

Q. Where did you go?—A. To the church basement.

Q. How far from the town hall?—A. Six or eight rods.

Q. Did you lock the town hall, when you went away, in which the election was held?—A. My mind is that there was a gentleman there to look after it.

Q. Who do you think stayed there?—A. I couldn't tell you.

Q. Did all the inspectors of the election go to dinner at the same time?—A. Yes, sir.

Q. Then, you stated, the ballot box was locked when you went to dinner? Was it in a locked and sealed condition?—A. It was sealed—sealed and locked—that is, the lid was locked; the slot in the lid where the ballots went through was sealed.

Q. Then you had a cover over the seal where the ballots went through into the ballot box?—A. Yes, sir; sealed with paper.

Q. The slot to the ballot box was sealed so nobody could put any ballots in without breaking that seal?—A. Yes, sir.

Q. When you got back after dinner did you find the ballot box sealed and in the same condition it was when you went to dinner?—A. Yes, sir; it was intact.

Q. Did you find any of the ballots missing that had not been voted?—A. No, sir.

Q. All the ballots that had been voted were in the ballot box when you left that election and went to dinner?—A. Yes, sir.

Q. This one opening into the ballot box was sealed up so no more ballots could be put in without breaking that seal?—A. Yes, sir.

Q. When you got back you found it in the same condition it was when you went to dinner?—A. Yes, sir.

Q. You went to supper, you say, that same day, your board?—A. Yes, sir.

Q. All go at the same time?—A. The board, I think, all went at the same time.

Q. Went to the same place, probably?—A. Yes, sir.

Q. Was the election held on the first floor or the second floor of the town hall?—A. On the first floor; there is but one floor in the hall.

Q. Well, do you remember about what hour you went to supper?—A. I think it was very soon after 5 o'clock.

Q. The polls closed at 5 o'clock?—A. Thereabouts.

Q. The law requires that the polls be closed at 5 o'clock; you observed that law?—A. I think we did very closely; it might have been a period of a minute or two or something like that, but very close.

Q. Without opening the ballot box or commencing the count of any ballots that had been voted you went to supper before you commenced to count?—A. Yes, sir; that is my memory about it; I will not swear positively that is the case, but that is my memory now.

Q. When you went to supper you sealed the ballot box?—A. Yes, sir.

Q. And sealed it so that nothing could be put into it or nothing taken out without breaking the seal?—A. Yes, sir.

Q. Was it locked in addition to sealing?—A. Yes, sir.

Q. Something was put over the slot, the only opening in the ballot box, so that nothing could be put in or taken out without breaking the seal over the slot?—A. Yes, sir.

Q. When you got back after supper did you find that ballot box in the same condition you left it when you went to supper?—A. Yes, sir.

Q. It had not been tampered with?—A. No, sir.

Q. The seal hadn't been broken?—A. No, sir.

Q. And the ballots that had been voted that day were in there?—A. They certainly must have been.

Q. Did you have more than one ballot box that day for the ballots containing the ballots which contained the names of the different candidates?—A. Only one ballot box.

Q. That ballot box, I assume, contained all of the ballots, all the tickets on which the different candidates for Representative in Congress were named?—A. Yes, sir.

Q. At that election there that day did you see anything that in any way affected the fairness of the election?—A. I can't think of anything; it seemed to be perfectly fair.

Redirect examination by Mr. MAYNARD:

Q. It is impossible for you to state now from recollection whether you sealed that ballot box that time or not?—A. I think I am quite positive it was sealed.

Q. You said you didn't know whether you did, but that was your general practice?—A. That is my memory that we sealed it, and from the general practice, too.

FRANK A. NEWALL, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. In the city of Kalamazoo.

Q. In the city of Kalamazoo, Kalamazoo County, Mich.?—A. Yes, sir.

Q. Were you present at the general election held in the second precinct of the city of Kalamazoo, Kalamazoo County, Mich., on the 5th day of November, A. D. 1912?—A. Yes, sir; I was.

Mr. MAYNARD. Is it conceded that the following are the charter provisions of the city of Kalamazoo relative to inspectors and clerks of elections?—

"SEC. 6. The aldermen of each ward shall be inspectors of election for such ward. The aldermen of each ward shall on or before the Saturday next preceding any election appoint from the electors of the ward such number of additional inspectors of election as shall make the number of inspectors of elections in any voting precinct equal to the number required by the general election laws of this State, and the electors so appointed, together with the aldermen of the ward, shall constitute the board of election inspectors in the various wards of the city. The inspectors may employ one or more electors of the ward as polling clerks, who shall receive such compensation as the city council may prescribe. In the case of a failure of any inspector to attend or remain at the polls, or of his disqualification, his place shall at once be filled by the appointment of some elector of the ward, which appointment shall be made by the remaining inspector or inspectors. The alderman whose term of office soonest expires shall be chairman of the inspectors, or in his absence or disqualification the inspectors shall elect a chairman. Such boards of inspectors shall have power to correct at the polls any clerical errors that may be discovered in the registration.

"SEC. 7. The inspectors and clerks of election shall take an oath, to be administered by any person authorized to administer oaths, to honestly and faithfully discharge their duties as such inspectors and clerks of election. All elections in the city shall be conducted, as near as may be, in manner provided by law for holding general elections in townships throughout the State, except as herein otherwise provided, and the inspectors of election shall have the same powers and authority to preserve the purity of election, maintain good order, and enforce the obedience of their lawful commands during the time of holding any election, and the canvass of the votes cast thereat, as is now or may hereafter be given to township boards of election by the general statutes of the State, and shall perform the same duties as the inspectors of election as township inspectors of elections."

Mr. ADAMS. It is stipulated that before and during the entire year 1912 that there were five wards in the city of Kalamazoo and that there were two aldermen from each ward, and that no aldermen were candidates for reelection and that no aldermen were elected at the November 5, 1912, election; the election for aldermen of the city being fixed by law to occur on the first Monday of April each year.

Q. Were you one of the inspectors in the second precinct on that day?—A. Yes, sir.

Q. Did you go there at the opening of the polls in the morning?—A. Yes, sir.

Q. How long did you stay there?—A. From before 7 o'clock until somewhere about 2 o'clock.

Q. The following day?—A. The following morning; yes, sir.

Q. Of the 6th?—A. Yes, sir.

Q. Witness, what office do you hold; what part did you perform of the duties?—A. I think I was appointed as inspector; that has been the custom always of the chairman, to furnish the different ones in the position they were elected to; I had been holding the position of clerk.

Q. What is that; the poll book?—A. Yes, sir; it is the tally sheet.

Q. You wrote the names down as they came in? The tally-sheet book is the book in which you kept the tallies when you came to count up?—A. Yes, sir.

Q. The poll book is the book in which are kept the names of the voters?—A. Yes, sir.

Q. Who gave out the ballots to the voters?—A. Well, that is a hard question to answer for certain, for sometimes different ones did that.

Q. This particular day do you remember?—A. I think it was a man named Wilkins handed out some and sometimes a man named Peel handed them out.

Q. Were they inspectors?—A. Yes, sir.

Q. Did you adjourn the polls for dinner?—A. No, sir.

Q. At what hour did you close the polls?—A. Five o'clock.

Q. Did the board go for supper?—A. No, sir; we had supper there.

Q. In the precinct?—A. Yes, sir.

Q. Witness, when did you make out your returns?—A. Just as soon as the votes were all counted.

Q. That same morning?—A. Yes, sir.

Q. That was—were you there throughout the day?—A. Yes, sir.

Q. Did you have any suffragettes at the polls?—A. Yes, sir.

Q. All throughout the day?—A. Yes, sir.

Q. What were they doing?—A. They sat there and saw their ballots handed out.

Q. Did they hand them out?—A. No, sir.

Q. The suffragettes didn't hand any out?—A. No, sir.

Q. You didn't let them do that?—A. No, sir.

Q. Did you see any party challenger in around behind the booths assisting voters there that day?—A. I didn't see them assisting any; I am of the impression there were.

Q. What did they do? Did they go into the booths with the voters?—A. No, sir; not as far as I know of.

Q. What did you see them do?—A. I didn't see them do anything; I overheard it.

Q. What did you hear?—A. I heard some one call for instructions and some gentleman on the back of the booths told them what to do; they were perfectly innocent of what they were doing, and as soon as we heard it we stopped it. One of the gatekeepers, he said, was giving instructions back there, and when we were told of it we stopped it immediately.

Q. Headed it off, eh?—A. Yes, sir; as soon as we knew it.

Q. How long was he back there?—A. It was not to exceed an hour, anyway.

Q. Was he in any way a member of the board?—A. No, sir.

Q. Did you see any voters there that asked for instructions?—A. I couldn't say that I did, while it is a very common occurrence to have happen; there were quite a number that day; I couldn't say who they were; I saw them, but I didn't give any instructions.

Q. Did you see any man asking for instructions?—A. I didn't do that; I didn't take particular notice of it.

Cross-examination by Mr. ADAMS:

Q. On November 5, 1912, that is when you have in mind, you don't recollect of anybody receiving any instructions from a member of the board?—A. I couldn't tell you a single name.

Q. Do you recall the fact that any instructions were given on that particular day by any of the board?—A. I don't understand that.

Q. Referring to November 5, 1912, is it not a fact that you don't know now whether or not any instructions were given to any voters there?—A. As long as I can't tell the names of any of them, I couldn't say no; it is a very common occurrence—

Q. I know; but wait a minute, what I want to get at is it a fact that you have no recollection now of any instructions being given to any voters on the 5th day of November, 1912—not what might have been, not some other time, but that day—you have no recollection of anybody having received any instructions?—A. No, sir; I couldn't say I do and prove it.

Q. As far as that other circumstance you relate on your direct examination, you say that somebody told you that—that there was some one doing something on the other side of the booths for a little while in the morning—the gatekeeper?—A. Yes, sir.

Q. You wouldn't know of your own knowledge what was being done?—A. No, sir.

Q. You don't know whether any instructions were, in fact, given to any voters?—A. No, sir.

Q. Or whether anybody attempted to give anybody, or whether anybody attempted to go in the booths with anybody, with any voter or anything of that kind, do you of your own knowledge?—A. No, sir; I heard a gatekeeper—

Q. I am asking you for your own knowledge; you don't know that anything was wrong being done there, that anybody was given any instructions, of your own knowledge?—A. No, sir.

Redirect examination by Mr. MAYNARD:

Q. Did you hear somebody—you said you couldn't see, but you heard—what did you hear?

Mr. ADAMS. Unless he is going to tell what he heard and not what somebody did, we object to it.

A. I don't recollect what it was; I am not attempting to tell it; our attention was drawn to it; that is the reason we stopped it; I will not attempt to tell what it was.

Recross-examination by Mr. ADAMS:

Q. The gatekeepers there, you had two of them?—A. Yes, sir.

Q. One gatekeeper had his gate where the voters came into the voting place?—A. Yes, sir.

Q. That is the gate that goes in through the railing?—A. Yes, sir.

Q. Another gatekeeper attended the door or gate where the people exited—go out?—A. Yes, sir.

Q. The fellow who on this November 5, 1912, election day where you were acting as inspector of election was attending the entrance gate, I suppose; voters coming in there, sometimes the gatekeeper would talk to them about various things, not about election at all; they frequently do?—A. Yes; that happens.

Q. Do you know anything wrong about the gatekeeper instructing anybody about matters of election at all?—A. I would be almost positive they did not.

Mr. MAYNARD. Something took place that caused the gatekeeper to make a disturbance about it?

A. Yes, sir.

JOHN R. ROCKWELL, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. First precinct, this city.

Q. City of Kalamazoo?—A. Yes, sir.

Q. Kalamazoo County, Mich.?—A. Yes, sir.

Q. Were you present at the general election held in the first precinct in the city of Kalamazoo on the 5th day of November, 1912?—A. I was.

Q. Did you have any official connection with the board of inspectors in that precinct?—A. I acted as clerk on that board.

Q. When did you commence work with the board—when the polls opened in the morning?—A. Yes, sir.

Q. How long did you continue with them?—A. Until the report was made out about 2 o'clock the following morning.

Q. Two o'clock on the morning of the 6th?—A. Yes, sir.

Q. Witness, you were present there all day?—A. Yes, sir.

Q. Did you see any voters there applying for assistance? For instructions?—A. Instructions in regard to what?

Q. In regard to marking their ballots?—A. I can't recollect that I did. I have worked on the board several times and I have seen things of that kind and I don't recollect whether at this election anybody called for help or not.

Q. Did you see any suffragettes around?—A. There were a couple of ladies in the room.

Q. Were they behind the railing in the voting place?—A. They were in the same room where the booths were.

Q. Did you have a railing surrounding your voting place in that precinct?—A. No, sir; the booths were in a room by themselves. The two clerks who kept the tally book are in the same room and the man who took the ballots and the two gatekeepers. The inspectors handing out the ballots are in a room adjoining.

Q. Not in the same room?—A. No, sir.

Q. They couldn't see each other?—A. No, sir.

Q. Where did the voter go when he got his ballot?—A. He came in the room where the booths were; the table at which the ballots were handed out was in the doorway.

Q. Between the two rooms?—A. Yes, sir.

Q. Where was the gatekeeper?—A. He was inside of the room where the booths were.

Q. What is there to keep the voters from going where the ballots are?—A. The table at which the ballots are handed out is the same as setting by the side of that door and in the next room is where the booths are; this is a small room large enough to hold the table at which the two clerks sat that kept the tally books.

Q. Where did the inspector stand to deliver the ballots?—A. At that table.

Q. In this room?—A. Yes, sir.

Q. There is no gatekeeper the other side of the table?—A. Both gatekeepers are in another room.

Q. Did they have any railing around the booths?—A. I don't think so.

Q. They didn't get into the room where the man delivered the ballots at all?—A. Yes; they could go through that room where the ballots were handed out; as the voter receives his ballot he steps through into the room where the booths are inside in that same room where he votes.

Q. Where were the women?—A. They were in the room where the booths were.

Q. Where the ballot is handed to the voter?—A. No; where the booths are.

Q. Where the man went with his ballot when he got it?—A. Yes, sir.

Q. They had an opportunity then to address the voter after he had received his ballot?—A. They simply had a seat; there was one lady——

Q. They had an opportunity, didn't they, to address the voter if they saw fit after he got his ballot, before he went in the booth?—A. I don't hardly understand your question in regard to that; there was no lady in the—that is, right in where the booths were; the lady sat in the same room where the booths were in. They passed near the same table where the other clerk and I sat and we were in the room where the booths were, and the ballots were handed out in a different room just as they came in the room where we were.

Q. Then they came through into your room?—A. Yes, sir.

Q. Your inspectors at that precinct did not let the ladies have the privilege of handing out the ballots?—A. No, sir.

Q. Or tear off the corners or anything like that?—A. No, sir.

Q. Were there any others in the room where this voting was going on who had no right there aside from those two women?—A. No, sir.

Mr. ADAMS. I object to that and move to strike out the answer upon the ground that it assumes something there is no foundation for and as incompetent.

Cross-examination by Mr. ADAMS:

Q. These women were challengers for the suffragette party?—A. I suppose they were; they came under the personal care of the board; they sat down and read magazines all the time they were there.

Q. They were orderly?—A. Yes, sir.

Q. Did you know them?—A. I did not.

Q. They didn't take any part in the election at all?—A. No, sir.

Q. Just sat there and watched things and read their magazines?—A. Yes, sir.

Redirect examination by Mr. MAYNARD:

Q. The judge suggested to you that the suffragette party had a right on that ticket; do you know of any such party?—A. No, sir.

Q. Of any such a political party?—A. No, sir.

Q. Did you know of any such political party or were you informed there were any challengers there for any such political party that day?—A. No, sir.

Recross-examination by Mr. ADAMS:

Q. The suffragette question was being voted on that day at that election?—A. Yes, sir.

Q. On a ballot by itself?—A. Yes, sir.

Q. Wholly independent of the ballot on which the candidates for the different offices were being voted for?—A. Yes, sir.

Q. And wholly independent from the ballot on which the respective candidates for Representative in Congress appeared?—A. Yes, sir.

NORBERT WHEELER, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Kalamazoo, Mich.

Q. Kalamazoo County, Mich.?—A. Yes, sir.

Q. What is your age?—A. I am 27.

Q. What is your occupation?—A. I am in the plumbing and heating business.

Q. Were you present at the general election held in the third precinct of the city of Kalamazoo, State of Michigan, on the 5th day of November, A. D. 1912?—A. Yes, sir; the third precinct.

Q. Did you have any official position there that day on that election board?—A. Yes, sir; I was chairman of the board.

Q. Of the inspectors?—A. Chairman of the board.

Q. Were you there from the time the polls opened until night?—A. Before the polls opened and I was there when they closed.

Q. What time did you get through counting?—A. About 1 o'clock; that is, the count, and made out the records the next morning.

Q. That day were there any voters who applied for instructions as to marking their ballots?—A. Yes, sir.

Q. More than one?—A. I expect there were.

Q. Several?—A. I expect six or seven.

Q. Did they receive instructions?—A. They called for instructions.

Q. They received instructions from the board, did they?—A. Being the chairman I told the inspectors to take care of them.

Q. They received instructions, did they?—A. I don't know; I don't know about the six or seven; I instructed one myself and another inspector.

Q. Who was he; do you remember?—A. Yes, sir.

Q. Who?—A. I know him, but not by name.

Q. Was there any visible signs of his being unable to mark his ballot?—A. Yes, sir.

Q. What was it?—A. His eyesight and feebleness.

Q. Was there any others besides that that you assisted?—A. No, sir.

Q. Were there others that asked for assistance that were in the same condition?—A. I couldn't say as to that.

Q. Was there any oath administered to any of those voters who were unable to read the English language, or physically disabled to mark his ballot, therefore received instructions?—A. Not at that time.

Q. Did you at any time witness or administer any oath to the voters yourself when they asked for instructions?—A. I did not.

Q. Did you hear anybody else?—A. Not at that election. This man I instructed—an oath had been administered to him that he could not read at the previous election.

Q. Were there any suffragettes at that voting place allowed behind the railing?—A. Yes, sir.

Q. More than one?—A. I remember of two.

Q. Did they participate in any way in the handing out of the ballots?—A. No, sir.

Q. How many inspectors of election did you have there?—A. I think there were 6 clerks and inspectors and 2 door men; 8 in all.

Q. These door men are what are called gate-keepers?—A. Yes, sir; door tenders or gate-keepers.

Q. They opened a door instead of a gate?—A. Yes, sir.

Q. Was there anything to keep people from the place where the ballots were kept?—A. Yes, sir.

Q. Anything to keep the people from where the booths were?—A. No, sir; the railing didn't extend all the way around the booths.

Q. Where did the women sit?—A. They sat inside of the railing with the inspectors; not with the inspectors, but back of them.

Cross-examination by Mr. ADAMS:

Q. You stated, Mr. Wheeler, that the booths, that there was no railing clear around them; isn't it a fact that those booths were practically up against the wall on one side, were they not?—A. They were not; no, sir.

Q. And the walls of the room itself made a railing around and inclosed them?—A. The east wall would be the railing and an aisle between the booths and the wall.

Q. The aisle would be between the booths and the wall?—A. Yes, sir.

Q. How far was it between the booths and the wall on the east side?—A. Four or five feet.

Q. Just a passageway?—A. Yes, sir.

Q. On the 5th day of November, 1912, at that election in that precinct the railing was on each end of the room, so in order to get to the booths you had to go through a gate?—A. No, sir.

Q. How did you get into the booths?—A. You went through the aisle.

Q. How did you get into the aisle?—A. The aisle that would be the north side of the booths on one side and another railing that went across the front.

Q. They had to go through a gate somewhere before they could get in?—A. There were no gates.

Q. They had to go through some sort of an opening?—A. The railing, and received their ballot and passed to the gatekeeper.

Q. Then where did they go?—A. Into the booths—entered the aisle and went into the booth.

Q. Entered that aisle and went into the booth?—A. Yes, sir.

Q. When they got ready to vote where did they go out?—A. They came right through the booth.

Q. Came through that door to the booths?—A. They came through the booth and the railing.

Q. That was in the engine house?—A. In the rear of it.

Q. You say that you instructed one man?—A. Yes, sir.

Q. You had known that man?—A. I know who he is.

Q. You had been on the election board before?—A. Yes, sir.

Q. This man was a feeble man?—A. Yes, sir; he was what I would call feeble.

Q. You could see that from his appearance that day?—A. Yes, sir.

Q. He was the only man you instructed?—A. Yes, sir.

Q. Well, he perhaps asked you which was some particular ticket?—A. Yes, sir.

Q. Did he mark the ticket himself or did you for him?—A. I didn't see the ticket marked. We were very busy; it was about closing time, and I walked away and left him in the booth after pointing out to him the head of his party.

Q. That was the only thing, where the head of the ticket was?—A. Yes, sir.

Q. You told him that correctly?—A. Yes, sir; pointed it out to him.

Q. Then you left him to mark the ballot himself?—A. Yes, sir.

Q. He didn't mark it when you left?—A. Yes, sir.

Q. Is that correct?—A. Yes, sir.

Q. There was another inspector with you?—A. Yes, sir.

Q. Now, any others that may have applied for instructions that day, you don't know who they were or whether any instructions were, in fact, given them in the booth?—A. No, sir; I do not. I am quite positive there were more than that.

Q. But you don't know what was done, if anything, in the way of giving them instructions?—A. No, sir.

Q. Nor what was the matter with them or anything of that kind?—A. I didn't inquire.

Q. You were an officer in the third precinct?—A. Yes, sir; first ward.

CHARLES H. LITTLE, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Second ward, city of Kalamazoo, 415 Woodward Avenue.

Q. What is your occupation?—A. I am engaged in the feed and grain business.

Q. Were you present at the general election held in the Fourth precinct in the city of Kalamazoo, Kalamazoo County, Mich., on the 5th day of November, A. D. 1912?—A. Yes, sir.

Q. Did you have any official connection with the board of inspectors?—A. I was an inspector; yes, sir.

Q. How many inspectors did you have?—A. Four, I think; might possibly have been one more; I am not quite sure.

Q. How many clerks?—A. Two.

Q. Did you go there in the morning at the opening of the polls?—A. About 6.30; yes, sir.

Q. How long did you remain?—A. Until about 12 o'clock at night.

Q. The polls were closed at what hour?—A. Five o'clock.

Q. Were there voters who applied for instructions as to how to mark their ballots during the day?—A. Yes, sir.

Q. Would you be able to state how many?—A. Why, four or five, I should say.

Q. Did they receive instructions?—A. Yes, sir.

Q. Or assistance?—A. Yes, sir.

Q. Was there any oath administered to them before they went in the booth that they were unable to read the English language or were physically disabled to mark their ballots?—A. No, sir; there was not.

Q. Did you hear or know of any oath being administered to any of the voters there that asked for assistance that day there?—A. No, sir; not that asked for assistance.

Q. Mr. Little, did you have any women there behind the railing that day at that polling place?—A. Yes, sir.

Q. How many?—A. There was one there all the time, and I think there was another lady there a part of the time.

Q. They were admitted behind the railing?—A. Yes, sir; that is, admitted behind the railing.

Cross-examination by Mr. ADAMS:

Q. You think, Mr. Little, that four or five voters asked for instructions?—A. Yes, sir.

Q. I understood you to say that they received instructions?—A. Yes, sir.

Q. They were men, you noticed, who were physically incapacitated, some of them?—A. Yes, sir.

Q. Do you remember who they were?—A. One I remember distinctly.

Q. Who was that?—A. George Clark.

Q. He is an epileptic; not an epileptic, but has St. Vitus's dance, or something of that kind?—A. I don't know what his incapacity is.

Q. Shakes all the time?—A. Yes, sir.

Q. When he came in there the 5th of November, 1912, you could see that he could not write and mark his ballot; you knew that before?—A. I knew that from past experience.

Q. That was his physical condition and it was apparent?—A. Yes, sir.

Q. He is an object who attracts attention as he passes along the street?—A. Yes, sir.

Q. His legs are crooked and he drags himself along, practically all the time his head going?—A. He has got a nervous condition.

Q. That is very apparent to anybody?—A. Yes, sir.

Q. And was on November 5, 1912?—A. Yes, sir.

Q. Do you remember any others? Whether you remember them or not, it is a fact?—A. I was just trying to recall.

Q. Whether you recollect the names or not the fact is they were all men that you observed when they came in that they were physically disabled?—A. Not all; I would not say.

Q. Give us the names of those you can recollect.—A. There was a Hollander.

Q. He was an old man?—A. No, sir; I don't think so; 55 or 60.

Q. Physically disabled in some particular?—A. I don't know that he was; no, sir.

Q. Well, you didn't go in the booth with him?—A. Yes, sir.

Q. How did you happen to go in the booth with him?—A. He asked for instructions.

Q. Did you swear him?—A. No, sir.

Q. Was he sworn?—A. No, sir; I don't think so.

Q. Did another inspector administer the oath to him?—A. No, sir; they did not; not to my knowledge.

Q. How did you happen to go into the booth with him without administering an oath to him?—A. It has been customary where a voter asks for instructions that two inspectors go in the booth.

Q. You and another inspector went into the booth with him that day?—A. Another inspector.

Q. Did he mark his ballot himself when he went in?—A. I think so; yes, sir.

Q. Did you stay to see him mark his ballot or tell him how to mark it and go out?—A. I don't remember distinctly; he asked for instructions.

Q. He was a Republican, was he?—A. I couldn't say as to that.

Q. Don't you know that he was?—A. No, sir; I do not.

Q. He has been a Republican in Kalamazoo, has he not, for a long time, for some time prior to that election and up to November 5, 1912?—A. I don't know, sir.

Q. You don't know what his politics were that day?—A. No, sir.

Q. Do you know how he was enrolled or registered, whether he was enrolled as a Democrat or Republican: what he was enrolled at just prior to that election?—A. No, sir.

Q. You don't know how he voted?—A. No, sir.

Q. You didn't know how he voted at the time, did you?—A. Perhaps I knew at the time.

Q. I suppose he simply asked you for some instructions how to mark his ballot, then marked it himself, and you didn't see how he marked it, did you?—A. I don't recollect that I did; no, sir.

Q. That is all you remember about those who received instructions there that day, is it?—A. Yes, sir.

Q. You say in the four or five instances you have mentioned that no oath was administered to any of them?—A. No, sir; there was not.

Q. What is that?—A. There was not.

Q. You were a Republican at that time?—A. Yes, sir. May I correct that?

Q. Yes, sir.—A. I was enrolled with the Republican Party.

Q. You were an alderman at that time?—A. No, sir.

Q. Who was the other inspector on that board at that time?—A. J. D. Schell, Mr. McQuigg, and Mr. Crose was on the board. I couldn't say whether as an inspector or clerk.

Q. Did you act as inspector or clerk?—A. I was chairman of the board.

Q. At the November 5, 1912, election you were chairman of the board?—A. Yes, sir.

Q. You have told all you know about the matter of the four or five men who came in there and applied for instructions, have you—all you recollect?—A. Why, it has always been customary——

Q. It is not a question of custom; I am talking about something else than custom.

Last question read.

A. All I can recollect at the present time; yes, sir.

Q. You had challengers there for the different political parties at that precinct that day?—A. I don't think so.

Q. Do you mean that in the fourth precinct of Kalamazoo on November 5, 1912, election there were no challengers?—A. I don't remember of any; no, sir.

Q. Well, a Democratic and Republican inspector went in each time when anybody went in the booth, didn't they, for instructions?—A. Always two; yes, sir.

Q. Usually one from one political party and one from another political party?—A. That is always customary.

Q. You did that day, did you?—A. Yes, sir.

Q. In so far as you gave any instructions that day, did you instruct the men honestly and correctly, according to the instructions asked for?—A. Absolutely; yes, sir.

Q. In each instance when you went in there did you go in more than one, with this Hollander?—A. With Mr. Clark and others.

Q. In each instance when you did go in, when any instructions were given, I suppose that the man asked you inspectors who went in in each instance for some information?—A. Yes, sir.

Q. About how to vote that ballot?—A. Yes, sir.

Q. Then you simply answered his questions and gave him the information he asked you about?—A. Yes, sir.

Q. Is that the extent of what you did?—A. Yes, sir.

F. B. GODFREY, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Kalamazoo, Mich., in the fourth ward.

Q. Were you present at the general election held in the tenth precinct of the city of Kalamazoo, Kalamazoo County, Mich., on the 5th day of November, A. D. 1912?—A. I was.

Q. Had you any official connection with the board of inspectors?—A. I did have.

Q. What was it?—A. I was one of the inspectors.

Q. Did you begin operating with the board in the morning at the opening of the polls?—A. Yes, sir.

Q. How long did you remain?—A. Until the completion of the county and the books were signed up and assisted in carrying the ballots to the city clerk's office. That was about 2 o'clock in the morning.

Q. Were you supervisor or alderman?—A. I am not now.

Q. You were elected as inspector or appointed?—A. Yes, sir.

Q. Did you have during the day applications from voters for instructions as to how to mark their ballots?—A. Yes, sir.

Q. How many?—A. I think four or five; I remember two occasions especially.

Q. What were those applications for?—A. Assistance in marking their ballots.

Q. Because of physical disability?—A. One was; he could not see very well; and one was he couldn't read.

Q. Did he say he could not read?—A. Yes, sir.

Q. No oath was administered to him?—A. I didn't know it was the law to administer an oath to men who asked for assistance; I never knew it was the law.

Q. Do you know of any oath being administered to any voter that day who applied for assistance in marking his ballot?—A. I don't know it; I don't believe there was.

Q. Did you have any women behind the railing in that voting place?—A. We did; it didn't do any harm that I know of.

Cross-examination by Mr. ADAMS:

Q. Those women didn't take any part in the election?—A. No, sir; just made it pleasant.

Q. They didn't handle the ballots?—A. No, sir.

Q. And didn't do any talking to the voters or anything of that kind?—A. No, sir.

Q. Just stayed there and looked on?—A. Yes, sir; and visited.

Q. They didn't visit about the polls or anything of that kind?—A. No, sir; they were very much interested in learning how to vote, so they would be ready when it came.

Q. You think that four or five asked for assistance concerning their ballots that day?—A. I remember of two; generally there were four or five; maybe I was confusing last November with the other elections.

Q. Perhaps you may be confusing some other?—A. Yes, sir; I don't know whether they were or not; generally we have.

Q. I am now getting right down to this election of November 5, 1912.—A. Yes, sir.

Q. How many do you say, if any, received any assistance in the matter of their voting in that precinct?—A. I remember two positively.

Q. Beyond that you can not swear whether there were any or not?—A. No, sir; I can't.

Q. One of those you say couldn't see?—A. He was partly blind.

Q. You knew that to be a fact?—A. He said so, and asked for assistance on that account.

Q. Could you see that his eyesight was bad?—A. I presume I could if I had looked, but I didn't; I took his word for it.

Q. Who was it?—A. I don't know as I can tell you his name; he was in Grand Rapids a while; I don't know as I can tell you his name; he was a Hollander.

Q. Did you give him assistance?—A. Yes, sir; we did, and swore him for the first time in my life.

Q. Did you hear him sworn?—A. Yes, sir.

Q. Did you testify that he was unable to mark his ballot?—A. Yes, sir.

Q. There was another one you spoke of?—A. Yes, sir.

Q. I suppose that other one, on November 5, 1912, asked you something about the ballot. Did anybody go in the booth with him?—A. No, sir; he asked for assistance.

Q. In the matter of marking his ballot?—A. Yes, sir.

Q. Did you go in the booth with him?—A. Yes, sir.

Q. Who else went in?—A. Mr. Ten Busschen.

Q. You were a Republican and Mr. Ten Busschen was a Democrat?—A. Yes, sir.

Q. Did you have any challengers in that precinct at that time?—A. No, sir.

Q. I suppose he asked you a question about what he wanted to know, which was the Republican ticket?—A. He wanted to know, yes, sir, which was the Republican ticket and which was the Democrat ticket.

Q. And you told him?—A. Yes, sir.

Q. Did he mark his ballot himself?—A. It is hard for me to remember whether he marked it or whether we did.

Q. He may have marked it himself?—A. He may have done so under our direction.

Q. You and Mr. Ten Busschen answered his question?—A. Yes, sir.

Q. If he marked his ballot he marked it in accordance with the question he asked you and the information you gave him in answer to his question?—A. Yes, sir.

Q. You didn't in any way influence him one way or the other?—A. No, sir.

Q. You simply answered his question and he marked his ballot correctly?—
A. Yes, sir.

FRANK C. WALTERS, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Walters, where do you reside?—A. Ninth ward of the city of Kalamazoo.

Q. Kalamazoo County, Mich.?—A. Yes, sir.

Q. Were you present at the general election held in the Ninth Precinct of the city of Kalamazoo, Kalamazoo County, Mich., on the 5th day of November, 1912?—A. Yes, sir.

Q. Connected with the election board?—A. I was not; I was present all day.

Q. Do you know whether there were any voters who asked for assistance in the way of marking their ballots?—A. There were some who asked for assistance after they got in the booth.

Q. Were they assisted?—A. Yes, sir.

Q. Was there any oath administered to them?—A. No, sir.

Q. Did you see any women behind the railing of that voting precinct?—A. No, sir; there was not; there were women there outside of the railing sitting at a desk there.

Q. They were not in the voting precinct?—A. Not inside the railing; no, sir. No one was allowed inside of the railing.

Q. The women were not behind that railing?—A. No, sir.

Q. Where were the inspectors—behind the railing?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. You were there all day?—A. Yes, sir; from the time the polls opened until they closed.

Q. You were not a member of the board?—A. No, sir.

Q. Or clerk or gatekeeper or anything of that kind?—A. No, sir.

Q. You were there as a challenger?—A. Yes, sir; and checking clerk.

Q. Challenger and checker?—A. Yes, sir.

Q. You kept track of those who voted?—A. Yes, sir.

Q. There were some who asked for assistance?—A. Several there.

Q. Mr. Godfrey says three or four or five, did you see as many as that?—
A. As many as that; yes, sir.

Q. Some of them were physically disabled?—A. Why, there was one man who could not see; he was blind. I should judge; he was assisted in the room.

Q. Did he have the appearance of being blind?—A. He was certainly blind all right.

Q. You could see that?—A. Yes, sir.

Q. Do you know what his name was?—A. His name was Bolinger.

Q. Do you remember his first name?—A. No, sir.

Q. Do you know where he lives?—A. He died a short time ago.

Q. You don't know where he is now?—A. No, sir.

Q. Do you remember any others who asked for assistance that day?—A. I don't remember any others; I don't remember who they were.

Q. You can't say whether they were physically disabled or not?—A. There were some of them who couldn't read the ballots.

Q. You say you can't say whether the rest of them were physically disabled or not?—A. No, sir; I couldn't say as to that.

Q. You don't know?—A. No, sir.

Q. You don't know what occurred in the booths when they went in?—A. While inside the door we couldn't all get inside the booth when he was inside the door.

Q. Two inspectors went with him?—A. Yes, sir.

Q. Mr. Ten Busschen was one of the inspectors?—A. No, sir.

Q. You were in what ward?—A. The ninth.

Q. Who was acting as inspector?—A. Mr. Labadie was one; he was the alderman and chairman of the board and another was Lewis Sutherland.

Q. Mr. Sutherland was there at the same time?—A. Yes, sir.

Q. Mr. Labadie was a Republican?—A. Yes, sir.

Q. That was the same Mr. Sutherland who was elected alderman on the Democratic ticket?—A. Yes, sir.

Q. He is the man who ran against Mr. Labadie?—A. Yes, sir.

Q. Then they were the two who went with those men?—A. Yes, sir; different ones would go; they would ask for some one and sometimes they would be busy and others would go.

Q. The two inspectors from different political parties?—A. Yes, sir; one from each side.

Q. Did you see any soliciting of any votes or trying to induce those men who asked for assistance to vote one way or the other?—A. No, sir.

Q. No Democrat went into the booth to give assistance alone unaccompanied by another inspector?—A. No, sir; when he started to go in he generally called one of the others and he went in.

Q. If a Democratic inspector started for the booth he would call a Republican inspector to go with him?—A. Yes, sir.

Q. And the Republican went with him?—A. Yes, sir.

Q. If a Republican inspector started to go to the booth he would call a Democratic inspector and he would go in?—A. Yes, sir.

Q. So there were always two—one from each party?—A. Yes, sir.

W. E. BOYD, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Boyd, where do you reside?—A. In Comstock Township.

Q. What is your age?—A. I am 40 years old.

Q. What is your occupation?—A. I am running a retail lumber yard there now.

Q. At Comstock?—A. Yes, sir.

Q. Were you present at the general election held in the township of Comstock on the 5th day of November, A. D. 1912, county of Kalamazoo, and State of Michigan?—A. Yes, sir; I was on the election board there.

Q. What part did you have on the board?—A. I was clerk, one of the clerks of the election.

Q. Were you there when the polls opened in the morning?—A. Yes, sir.

Q. Where did you go to dinner?—A. I went home.

Q. Where did the others go?—A. I guess they all went home.

Q. Where were the ballot box and ballots left in the ballot box while you went to dinner?—A. We left those in the hall and put the poll books and unused ballots in the box and sealed the box and left the box in the hall.

Q. You opened the box, did you?—A. Yes, sir; at noon.

Q. That had the ballots cast in it?—A. Yes, sir; and placed the poll books in there.

Q. Together with the ballots that had been cast?—A. Yes, sir; and sealed the box and locked it.

Q. Then went away and left the things there on the table?—A. We left the ballot box in the hall locked and sealed.

Q. When did you return?—A. At 1 o'clock.

Q. Did you see voters assisted there through the day at that precinct?—A. Yes, sir; one.

Q. Only one?—A. Only one.

Q. What were the circumstances of that, was it somebody you knew?—A. Yes, sir; I have known him for a long time, and he always asks for assistance at election, and I have been on the board several times. He was a man I should judge somewhere about 80 years old, and his eyesight is defective; I know him well; I know his eyesight is defective.

Q. Did you go in?—A. No, sir; I didn't go in to see him. What called my attention particularly to it, we had a challenger of the Progressive Party, and he sat inside of the inspectors' fence there, and the question was whether this challenger should be allowed along with the two inspectors appointed by the board to mark this man's ballot, and they finally decided that the challenger had a right to see the ballot marked. So the two inspectors, who were appointed by the board to act for the man, marked his ballot and went in and also the challenger.

I would like to ask the question whether it is necessary for a man in his condition to take that oath?

Mr. ADAMS. No; it is not.

FRED C. WATERMAN, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Waterman, where do you reside?—A. In the fifth ward, twelfth precinct; I was at the twelfth precinct.

Q. Were you present at the general election held in the twelfth precinct of the city of Kalamazoo, Kalamazoo County, State of Michigan, on the 5th day of November, A. D. 1912?—A. Yes, sir.

Q. Were you a member of the board?—A. I was.

Q. What member?—A. I was inspector.

Q. How many inspectors did you have there?—A. I think we had four.

Q. Besides the clerks?—A. Besides the clerks; yes, sir.

Q. Did you go there at the opening of the polls?—A. Yes, sir; I did.

Q. Were you there when the polls were closed?—A. Yes, sir.

Q. What time did you close?—A. When we got through it must have been half past 2 o'clock.

Q. The closing of the polls?—A. At 5 o'clock.

Q. Did you begin the count immediately?—A. No, sir; we got our supper first.

Q. Did you adjourn?—A. Yes, sir; we adjourned long enough to get our supper.

Q. Did you have supper served?—A. Right there in the room.

Q. You didn't leave the polling place?—A. No, sir.

Q. You commenced the count immediately after supper?—A. Yes, sir.

Q. And finished about when?—A. About half past 2 o'clock, I think.

Q. That same night?—A. Yes, sir.

Q. When you finished voting, what was the first thing you did when you opened the polls?—A. In the morning?

Q. That night; opened the box I mean?—A. We sorted the ballots the first thing we did; that is, commenced to sort them.

Q. And count the ballots?—A. Yes, sir.

Q. Did you count them to ascertain whether they agreed with the poll list?—A. Yes, sir.

Q. Did they?—A. I think so.

Q. Did they agree with the poll list?—A. Yes, sir.

Q. Did you have the right number of ballots?—A. It seems to me we did; I think we did.

Q. Did you have to destroy any ballots?—A. No, sir.

Q. What did you do with the unvoted ballots?—A. We returned them to the city hall.

Q. Do you know what number you put down?—A. No, sir.

Q. Did you make a record of how many you had left?—A. No, sir; I did not.

Q. You don't know how many they had?—A. No, sir.

Q. During the day did you have applications for assistance from voters as to marking their ballots?—A. Yes, sir.

Q. How many did you have?—A. Why, I am safe in saying four.

Q. Were those all people you were acquainted with?—A. No, sir; I was not acquainted with any of them.

Q. What kind of assistance did they want?—All they wanted was some one to show them how to mark the ballot.

Q. Did they receive the assistance?—A. Yes, sir.

Q. Was any oath sworn; was any oath administered?—A. No, sir.

Q. When they asked for assistance they went right in the booth without any oath being administered as to their necessity of being assisted?—A. Yes, sir.

Q. As to whether they could read the English language or not?—A. Yes, sir.

Q. At that voting precinct did they allow women behind the railing?—A. Yes, sir.

Q. During the day?—A. Yes, sir.

Q. Those women were not in any way connected with the board of election inspectors?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. Those women you speak of consisted of how many?—A. There was but one there. There were two during the day, but they changed off—two different women, but only one there, you might say, at a time.

Q. They were representatives of the suffragette party?—A. Yes, sir; I think so.

Q. They didn't take any part in the election?—A. Not the least.

Q. Didn't handle any ballots?—A. No, sir.

Q. Or have anything to do with the voting?—A. None whatever.

Q. Simply sat there?—A. Yes, sir.

Q. Where did they sit?—A. They really sat right amongst us, you might say. The place being kind of small, it was pretty close when the clerks and all were there.

Q. They didn't interfere in any way with the election?—A. No, sir.

Q. Or suggest anything about the location?—A. No, sir.

Q. Didn't give any instructions to members of the board or anything of that kind?—A. No, sir.

Q. But simply were lookers on?—A. That is all.

Q. You said you adjourned for supper. I take it from your description that you didn't leave the building at all, or room?—A. No, sir.

Q. Where the books and ballot box were?—A. No, sir.

Q. You stayed right there and your supper was brought in to you?—A. Yes, sir.

Q. You simply didn't go ahead with the count, that is all, while eating supper, but were right there in the immediate presence of the ballot box and ballots and election books and your election returns and everything else?—A. Yes, sir.

ERNEST WISE, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. On Stockbridge Avenue, thirteenth precinct of the city of Kalamazoo.

Q. Were you present at the general election held in the thirteenth precinct of the city of Kalamazoo, Kalamazoo County, Mich., on the 5th day of November, A. D. 1912?—A. Yes, sir.

Q. Were you a member of the election board?—A. Yes, sir.

Q. When did you begin—at the opening of the polls in the morning?—A. Yes, sir.

Q. Were you there when they closed, at 5 o'clock?—A. Yes, sir.

Q. Your board adjourned after the closing of the polls?—A. They adjourned after we closed the polls and had our supper; then opened the polls. We didn't adjourn until our report was made out.

Q. That is, after the polls closed you had your supper before you proceeded with the count?—A. Yes, sir.

Q. When did you finish the count?—A. About 2.30.

Q. On the morning of the 6th?—A. Yes, sir.

Q. Do you know how many ballots were delivered to you when you started in?—A. One thousand ballots.

Q. How many did you have?—A. Eight hundred and seven.

Q. Were the others destroyed?—A. Not one.

Q. How many did you have when you got through?—A. We had the full number, 807. Every one was accounted for; they were all accounted for.

Q. Were there any you had to throw out?—A. Yes, sir.

Q. How many did you have unvoted?—A. Eight hundred and seven.

Q. Unvoted?—A. We returned them to the clerk.

Q. How many were returned?—A. The unvoted? I don't think that is in the report.

Q. Were you present at the polls all day during that election day?—A. Yes, sir.

Q. Did you see any voters apply for instructions as to how to mark their ballots?—A. Yes, sir.

Q. How many would you say?—A. Four or five.

Q. Did you know them all?—A. No, sir.

Q. Did they receive instructions?—A. Yes, sir.

Q. By whom were they instructed?—A. By myself and one of the other inspectors—Charles E. Dill.

Q. Did you have any challengers for the different parties there?—A. Not to my knowledge.

Q. Did anyone present themselves to your board as challenger for any political party?—A. Not to my knowledge; I have no recollection of it.

Q. Was there any oath administered to any of the voters who received assistance there before their ballots were marked for them?—A. No, sir.

Q. Did you have any women sitting behind your railing?—A. Yes, sir.

Q. How many?—A. Five or six. They came in in two relays. One relay was one, and the other two times two each time.

Q. Did they remain at this voting precinct all day?—A. Yes, sir.

Q. Were you there when you counted up at night?—A. Yes, sir.

(Cross-examination by Mr. ADAMS:

Q. Those women—the five or six women you have mentioned—were representatives of the women suffragettes?—A. Yes, sir.

Q. There were five or six different women there. I understand, who were there during the day?—A. Yes, sir.

Q. Some part of the day there was one; how many women the most?—A. Two at one time was the most.

Q. So they had relays of two women?—A. Yes, sir.

Q. Those women did not take any part in the election, did they, in any way, shape, or manner?—A. No, sir; none whatever.

Q. Didn't handle any ballots?—A. No, sir.

Q. Didn't give any instructions to any voters?—A. No, sir.

Q. Didn't interfere with the election in any way?—A. No, sir.

Q. Didn't have anything particularly to say—just looking around?—A. Yes, sir.

Q. You were the representative of the Republican Party at that election?—A. Yes, sir.

Q. Mr. Gill was the inspector?—A. Yes, sir.

Q. Was he the representative of the Democratic Party?—A. Yes, sir.

Q. In those instances where any instructions were given to voters, you and Mr. Gill went together in each instance with the voter to the booth?—A. Yes, sir.

Q. Now, you said you adjourned. You mean by that, is that you simply went and had supper? You used the word "adjourned"; do you wish to correct it?—A. Yes, sir.

Q. You meant by that, didn't you, that you simply stopped work on the election business there and supper was brought right into the room where your ballot box and books and ballots were?—A. Yes, sir.

Q. You ate your supper right there in the immediate presence of the ballot box, ballots, and election books, right in your immediate sight?—A. Yes, sir; we didn't adjourn; we just simply didn't open the ballot box until after we had our supper. We had our supper on the table we had been working on. We cleared the supper off and went to counting on the table.

Q. You stayed there by the ballot box after 5 o'clock, when the polls closed, and ate your supper first?—A. Yes, sir; and opened the ballot box afterwards.

GEORGE THAYER, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Thayer, where do you reside?—A. Fifth ward. Kalamazoo, Mich.

Q. Were you present at the general election held in the fourteenth precinct on the 5th day of November, 1912?—A. Yes, sir.

Q. Were you a member of the board?—A. Yes, sir.

Q. Of election inspectors?—A. Yes, sir.

Q. Did you go there in the morning?—A. Yes, sir.

Q. Were you there all day?—A. Yes, sir.

Q. When did the election close?—A. When we closed it would be 5 o'clock, supposed to be; we didn't leave until nearly 3 o'clock.

Q. On the morning of the 6th?—A. On the morning of the 6th; yes, sir.

Q. Did you adjourn after the polls closed for supper?—A. No, sir; we did not. The box was placed to one side and we ate our supper on the table we worked on during the day.

Q. Then opened the box and proceeded with the count?—A. Yes, sir.

Q. Do you know how many ballots you received?—A. I couldn't say.

Q. Do you know how many you had when you were through?—A. No, sir; I do not.

Q. Did you have to destroy any ballots?—A. No, sir; they were all accounted for.

Q. During the day of the election were you present all day in the polls?—A. I was except when I ate dinner; three of us went in the house.

Q. Did you adjourn?—A. No, sir; we didn't adjourn.

Q. How many of you left?—A. Just three at a time.

Q. You and two others went together?—A. Yes, sir.

Q. When you returned what did you find?—A. The rest of them were to work, and as soon as I got my lunch I came right out and did the same—I went to work.

Q. Did the others go while you remained there?—A. Yes, sir.

Q. Did you see any of the voters there during that day at that election apply for assistance in marking their ballots?—A. I did; yes, sir.

Q. How many do you think?—A. Why, there were two, anyway. I can remember, and I presume there were more; there were two, anyway.

Q. Who were they, if you remember?—A. I don't know; nobody I knew. They went in the booth and they inquired for help, and the chairman of the board and another party went in inside the booth; what they done or said I don't know.

Q. Did you hear any oath administered to anyone who applied for assistance?—A. I did not; no, sir.

Q. Were there any women permitted in behind the railing of your voting precinct?—A. There were; yes, sir.

Q. How many?—A. There were two most of the time, and part of the time three. Of course, now, the railing—we had a similar room to this; a post put in the same as that door and the booths were on this side and our table was along there, and the women sat in that corner; they had their chairs there and a table there.

Q. They were in the room—in the same room—where the inspector and clerks of election were?—A. Yes, sir; just one room; that was an old barn.

Q. In the same room?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. Those women were representatives of the suffragette party?—A. Yes, sir; they were.

Q. They didn't take any part in the election at all?—A. None whatever: no, sir.

Q. Didn't handle the ballots or have anything to do with them?—A. No, sir.

Q. They didn't have anything to do with the voters?—A. No, sir.

Q. They were not anywhere near the booths?—A. No, sir; they were within 6 or 7 feet of them.

Q. They conducted themselves in a nice manner during the entire proceedings of the election?—A. Yes, sir.

Q. Did that inspectors' table constitute a railing in fact?—A. Well, yes; you might say—now, they came in in that door—the booths were just the same as this side here, and there was a string of eight booths, I think, and in between each four there was a space of about 2 feet. Our table stood along there, and the inspectors and clerks were on that side of the table, and they came in this door here and they went through into the booth, then through on the outside on the other side and came back to this place where these 2 feet were, and went out of the back door.

Q. Deposited their ballots and went out?—A. Yes, sir.

Q. You stated at noon you went away somewhere for lunch?—A. Yes, sir; went in the house.

Q. In the house?—A. Yes, sir.

Q. How far away?—A. In the neighborhood of 5 or 6 rods.

Q. How many were there of your board of clerks and inspectors?—A. I think there were four inspectors and two clerks and two gatemen, if I remember right.

Q. When you went to dinner how many of the inspectors and clerks and gatekeepers were left there?—A. Only three went.

Q. The rest of the board and the gatekeepers remained there while you were at dinner?—A. Yes, sir.

Q. When you got back you found them there?—A. Yes, sir.

Q. When you three came back another three went?—A. Yes, sir.

Q. The rest of them they all had their lunch?—A. Yes, sir.

Q. You kept the election going during the noon hour?—A. Yes, sir.

Q. You were inspector?—A. I acted as clerk.

Q. Now, two applied for assistance?—A. Two I remember of.

Q. That is all that applied for assistance?—A. That I am positive of; yes, sir.

Q. In each instance where any assistance was rendered to any voter that day there who applied for assistance two inspectors went to the booth with them?—A. Yes, sir.

Q. I suppose you had some Democratic inspectors and Republican inspectors?—A. Yes, sir.

Q. When a voter was rendered any assistance at all in the matter of marking his ballot usually a Democrat and Republican went with him?—A. Yes, sir.

Q. Every time?—A. Yes, sir.

B. O. BUSH, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Mr. Bush, where do you reside?—A. 36 West South Street in the city of Kalamazoo.

Q. Were you a member of the board of election inspectors at the general election held in the seventh precinct of the city of Kalamazoo, county of Kalamazoo, State of Michigan, on the 5th day of November, A. D. 1912?—A. I was; yes, sir.

Q. Did you see women behind the railing there?—A. Yes, sir.

Q. Do you know a woman by the name of Miss Marsh?—A. I know a woman who was introduced to me as Miss Marsh.

Q. Was she present there behind the railing during the election in that precinct?—A. Yes, sir.

Q. Did you see her handling any ballots at that election in that precinct—handing them to the voters?—A. Well, we were very busy that day, and one of the inspectors signed the ballots, and there being seven ballots in all it was a pretty hard matter to fold the ballots and get them ready and keep enough ahead and supply those; the lady, she didn't interfere, but now and then she would assist a little in folding, and oftentimes when a man's name was called, handed them out in the general order so the numbers agreed on the ballots, once in a while; she was very ladylike about it; she would pick up the ballots according to the number and hand them to the man when they called his name off the book of registration.

Q. She handed the ballots instead of the inspectors?—A. Yes; she did that several times.

Q. Was she in any way connected with the board of election inspectors there?—A. She was not; no, sir.

Cross-examination by Mr. ADAMS:

Q. This Miss Marsh only had the suffrage ballots, didn't she?—A. She handled the whole bunch; there were several ballots, if I remember right; seven of them, I think, last fall. I may be thinking back—I said seven—I was thinking back, of the spring election. There was more than—I will not say the number of ballots. The suffrage ballot and the general ballot, upon which ballot the State and county tickets are, I will not say; but in order to keep the numbers to correspond we would slip them into wrappers as the ballots were signed up, so as not to lose track of the number of the ballot so they would always correspond with the number on the poll list. The ballots laid there and I would look up and when I would say "all right" she would take the ballots herself and hand them out through the window to the applicant or voter.

Q. She was right there near you?—A. Yes, sir.

Q. You were right there close to Miss Marsh when she handed them out?—A. As close as to Mr. Stockwell here.

Q. Within a couple of feet?—A. Yes, sir.

Q. All these various ballots that you handed out to a voter to vote there was a rubber band about them?—A. No, sir; we kept the pile with a rubber band around so they would not slip, so we would be sure to keep the number of the ballots so they could correspond.

Q. Where did she get the ballots from; who handed them to her?—A. An inspector signed the ballots in another corner of the room and passed them along to some one and they were folded. Oftentimes he would push them to me, and I would lay the pile down without a rubber band around them, and oftentimes when I would be busy in straightening up the ballots and slipping a rubber band around them to keep the numbers consecutively and I would be busy there and a man would come to the window I would get his name and Mr. Walton would look on the registration book and call his name to be sure, she would pick up a ballot and pass it out of the window, and, being a lady, I didn't care to call her down for it, although she never unfolded any ballots.

Q. You say that she did not in any way tamper with the ballots, or mark them, or say anything to the voters, do you?—A. She was a perfect lady; she didn't say anything or tamper with them or say anything to the voters.

Q. She was a teacher in one of the schools, in the normal school?—A. Her occupation I am not aware of.

Q. Was James Chase a member of that board that day?—A. Yes, sir; he received the ballots.

Q. What shape was he in that day?—A. Well, for my part, I was glad the ladies were there.

Q. What was his condition?—A. He didn't look just right to me; he was pretty windy, anyhow.

Q. Did he appear to be in any way intoxicated?—A. I should say he was not exactly sober.

Cross-examination by Mr. ADAMS:

Q. Mr. Bush, while you were there that day was there a man by the name of John C. Smith come there to vote?—A. An old gentleman by the name of John C. Smith.

Q. Did you know him?—A. I have known him by sight for a great many years.

Q. You have been on election boards before in that precinct?—A. Yes, sir; many times.

Q. Was this John C. Smith a blind man?—A. They always said he was a blind man, and I considered him as such.

Q. You could see that from his actions and looks?—A. He had to have somebody to lead him.

Q. Did he apply for instructions that day there?—A. Yes, sir.

Q. Did any other man there, to your knowledge, that you saw, apply for any instructions in the manner of marking his ballot there that day, November 5, 1912, at that precinct besides this man Smith?—A. Not that I saw.

Q. You personally—that you saw, I mean?—A. No, sir.

Q. He was the only one?—A. He was the only one.

Q. You were there all day?—A. Yes, sir.

EDWARD F. CURTENIUS, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. MAYNARD:

Q. Where do you reside?—A. Kalamazoo, Mich.

Q. What is your occupation?—A. I am county clerk.

Q. What is your age?—A. I am 48.

Q. How long have you been county clerk?—A. Two years and three months.

Q. You were county clerk, were you, at the time of the general election held on November 5, 1912, in the county of Kalamazoo?—A. Yes, sir.

Q. On November 5, 1912?—A. Yes, sir.

Q. As such were you a member of the board of county canvassers?—A. I was clerk of the board of county canvassers.

Q. Have you the returns from the township of Alamo?—A. I think so; yes, sir.

Q. I wish you would produce them.—A. All right.

Q. I show you Exhibit 74, purporting to be the poll book of the general election held on Tuesday, the 5th day of November, in the township of Alamo, county of Kalamazoo, State of Michigan, and ask you to look on the first and second pages of what purports to be the blank official oaths and read the first official oath.—A. The first official oath is the inspector of election. (Reading:) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Rubert J. Cosher. Subscribed and sworn to before me this 5th day of November, A. D. 1912. A. Peck."

Q. Is there any official designation to the name of the person who administered the oath who it purports to be sworn before?—A. No, sir.

Q. The next oath, what is that?—A. That is the oath of an inspector of election also, signed in the same way.

Q. Is that signed in the same way?—A. Yes, sir; and sworn to in the same way.

Q. Is there any official designation after the name of the person it purports to be sworn to before?—A. No, sir; it is signed by another man.

Q. Subscribed to before whom?—A. A. Peck.

Q. Any official character to Peck's name?—A. No, sir.

Q. The next oath is what kind of an oath?—A. Inspector of election. F. H. Carlton, and sworn to before A. Peck.

Q. Has that any official character?—A. No, sir.

Q. The next oath is what?—A. It is signed by Leslie Hutchins and sworn to before A. Peck. The next oath is signed by Henry Norton and sworn to before A. Peck.

Q. What is that oath?—A. That is the clerk of election.

Q. You may read the next oath.—A. (Reading:) "Gatekeeper at election. State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of gatekeeper of this election, held Tuesday, the 5th day of November, A. D. 1912. C. G. Campbell. Subscribed and sworn to before me the 5th day of November, A. D. 1912. A. Peck."

Q. Any official character to that signature to that jurat?—A. No, sir.

Mr. MAYNARD. I call attention to the fact that the form of the oath does not comply with the requirements of the statute as to the oath that a gatekeeper is required to take.

Mr. ADAMS. I except to the remark of counsel; it is not a matter of argument at this time whether it is or not.

Q. Read the next one.—A. The next oath is that of gatekeeper. [Reading:] "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of gatekeeper at the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. R. J. Fisher."

Q. Is there any official character to that jurat?—A. No, sir.

Mr. MAYNARD. I call attention to the fact that this oath does not comply with the oath required to be taken by a gatekeeper at an election.

Mr. ADAMS. I move to strike out the comment of counsel.

Q. I show you Exhibit 75. How many tally sheet books do you find in the returns from the township of Alamo?—A. I find two.

Q. Look under the head, "Office of Representative in Congress, third district"; whose names do you find there as candidates?—A. Milo F. Martin, John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley.

Q. Opposite the name of John M. C. Smith what tallies do you find there? How many tallies opposite his name?—A. Eleven tallies opposite that name.

Q. What name?—A. John M. C. Smythe.

Q. Is there any alteration or erasure of that name?—A. Yes, sir.

Q. Can you tell over what the name is?—A. Not very plain; no.

Q. In comparison with the tally sheet?

Mr. ADAMS. I object to the witness telling what one book shows by comparing it with some other tally sheet book. He has testified from that book and testified what the book shows and should not draw any conclusions and I object to the question as calling for a conclusion and as incompetent.

Q. I show you Exhibit 76 under that same heading, "Representative in Congress, third district," what are the names there?—A. The first name is Milo F. Martin, John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley.

Q. Is that the tally-sheet book from this precinct?—A. One of them; yes, sir.

Q. This tally sheet, Exhibit 75; examine that and see if you can tell what was first written.—A. No, sir; I don't think I can.

Q. Is it apparent that where there is an "M" there was a "Y"?

Mr. ADAMS. I object to that as leading and calling for a conclusion.

A. Possibly it is.

Q. What does it read?

Mr. ADAMS. I object to it as incompetent and calling for the conclusion of the witness. The witness can tell what he finds there and that is all.

Q. What is the condition? What is the name? What are the characters there?—A. Well, they have written the name "John M. C. Smith" over some name that was partly erased before.

Q. John M. C. Smith?—A. I didn't notice that at the time. It looks like S-y-r-i-k.

Q. Is this the envelope this came in?—A. Yes, sir.

Q. I show you Exhibit 77 and ask you what that is?—A. That is the return from Alamo Township.

Q. The returns from Alamo Township?—A. To the judge of probate's office.

Q. Is that the one the board of county canvassers had?—A. Yes, sir.

Q. Has it ever been unsealed?—A. No, sir.

Q. Then the board of county canvassers compiled their election from the returns from the township of Alamo without looking at it?

Mr. ADAMS. Objected to as incompetent and immaterial.

A. Yes, sir.

Q. They never saw the returns made to the board?—A. No, sir.

Q. Do you find the returns here intact and the seals unbroken?—A. Yes, sir.

Mr. ADAMS. Do you want to open it? We will consent that they be opened.

Mr. MAYNARD. No, sir; we do not. You can not change the returns.

Q. Prairie Ronde. I show you Exhibit 78 and ask you what that purports to be?—A. The poll book of the general election held on Tuesday, the 5th day of November, A. D. 1912, at the township hall in the township of Prairie Ronde, county of Kalamazoo.

Q. I ask you to turn to the first two pages and read the first jurat.—A. (Reading:) Oath of inspector of election. "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector at an election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God." Not signed by anybody or sworn to before anybody by anybody.

Q. The next one?—A. The next one is oath of inspector of election. "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector at the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Levi A. Luce." Not subscribed and sworn to before anybody.

Q. Did any officer sign that jurat?—A. No, sir.

Q. Did any officer sign the next jurat?—A. No, sir.

Q. What is on the bottom of that page—what is it for?—A. Oath of inspector of election.

Q. Is that signed by anybody?—A. Yes, sir.

Q. Is the oath made out or is it in blank?—A. In blank.

Q. Is there any official jurat made by any officer?—A. No, sir.

Q. Take the next one; what is that?—A. Oath of clerk of election.

Q. Is that signed by anybody?—A. Jesse M. Crose.

Q. Is there any official jurat to that?—A. No, sir.

Q. Turn over the page.—A. Oaths of gatekeepers.

Q. Are either of them signed?—A. No, sir.

Q. Is there any jurat attached to either of them?—A. No, sir.

Q. Next to the last page; read the certificate.—A. (Reading:) "I do hereby certify that the foregoing is a true record of the disposition made in each case."

Q. Is that certificate signed by any officer?—A. No, sir.

Q. On the back part of the page, is the jurat signed?—A. No, sir; just wait a minute.

Q. Read the certificate and see if it is filled out.—A. (Reading:) "The whole number of votes cast is _____. The whole number of votes counted in the ballot box was _____. Ballots in excess of the number of voters voting and destroyed was _____. Whole number of votes corresponding with the poll list was _____. Be it known that immediately upon closing the polls in accordance with the laws of the State of Michigan the board proceeded to compare the foregoing poll list with this certificate, and that all mistakes found therein were corrected and said poll lists were found to agree. Witness our hand and seal this 5th day of November, A. D. 1912. Levi W. Luce, Jacob Schwartz, Ray Hartmann, Ray Kline, board of inspectors of the election held on Tuesday, the 5th day of November, A. D. 1912, Prairie Ronde, county of Kalamazoo."

Q. I call your attention to Exhibit 79 and ask you what that is.—A. That is the tally sheet of the general election held November 5, 1912, in the township of Prairie Ronde, county of Kalamazoo, Mich.

Q. How is that tally sheet kept—in ink or lead pencil?—A. It is kept in lead pencil, as far as the tallies are made—in lead pencil.

Q. I show you Exhibit 80 and ask you what that is.—A. That is a statement of the votes cast in the township of Prairie Ronde, Kalamazoo County, and returned to the judge of probate and board of county canvassers.

Q. Did the board of county canvassers make up their returns and canvass the votes for the office of Representative in Congress, the third district, without opening the returns received from Prairie Ronde?—A. Yes, sir.

Q. Are those returns now here unsealed and intact?—A. Yes, sir.

(Whereupon the hearing was adjourned until 9 o'clock a. m., April 9, 1913.)

WEDNESDAY, APRIL 9, 1913—9 O'CLOCK A. M.

EDWARD F. CURTENIUS was recalled and further testified on behalf of the contestee as follows:

Examined by Mr. MAYNARD:

Q. Now, turn to the first precinct of the city of Kalamazoo; were the poll books returned in that precinct?—A. No, sir; I don't think they were.

Q. Did the first precinct return both poll books?—A. Yes, sir.

Q. In the poll books are the official oaths filled out and signed?—A. No, sir; they are not.

Q. Are there any official oaths filled out in the forms following?—A. One of them.

Q. Which one?—A. The first one, the oath of inspectors of election.

Q. Who is that signed by?—A. That is signed by—I don't know this party—Irvin M. Simpson.

Q. Who is that sworn to before?—A. It was sworn before C. L. Miller, city clerk.

Q. Is that the only official oath that is filled out and sworn to in that precinct?—A. Yes, sir.

Q. Has any other officer of that election board in that precinct taken an oath before any officer who signed his name officially to the oath?—A. No, sir.

Q. How was it with the gate keepers; did they sign the official oath?—A. They signed the official oath, but it has not been acknowledged.

Q. No jurat?—A. No jurat.

Q. Is there any certificate filled out and signed by the board of inspectors?—A. No, sir.

Q. What is the certificate in the back of the book?—A. (Reading:) "Whole number of electors voting according to the poll list was _____. Whole number of ballots counted on opening the ballot box was _____. Ballots in excess of the number of voters voting and destroyed was _____. Whole number of ballots corresponding to the poll list was _____. Be it known that immediately upon closing the polls, in accordance with the law of the State of Michigan, we proceeded to compare the foregoing poll list with its duplicate, and that all mistakes found therein were corrected, and said poll lists were found to agree. Witness our hand and seal this 5th day of November, 1912. Inspectors of election, held on Tuesday, the 5th day of November, A. D. 1912, Kalamazoo County, State of Michigan." (No signatures attached.)

Q. Was that filed with the county clerk or judge of probate?—A. This one was filed with the judge of probate.

Q. Take the poll book for that ward that was filed with the county clerk and see whether the certificate is made out.—A. Yes, sir.

Q. Made out what day?—A. On Tuesday. "Witness our hands and seals, Tuesday, _____ day of November, A. D. 1912."

Q. Has that any signatures to it?—A. No, sir.

Mr. FRANKHAUSER. The objection you made yesterday may be considered to cover all the testimony at Kalamazoo.

Q. Take the poll book filed with the county clerk from that precinct, were the official oaths filled out and signed before some officer, or any of them?—A. Only one, I think.

Q. Which one is that?—A. That was the first oath, the oath of inspector of election.

Q. What officer was that sworn to before?—A. That was sworn to before C. L. Miller, city clerk.

Q. In his official character?—A. Yes, sir.

Q. To the jurat?—A. Yes, sir.

Q. Were there any of the rest of the official oaths signed by any of the officers?—A. No, sir; they were not.

Q. Take the tally sheet from that ward opposite the name of John M. C. Smith, candidate for Congress in the third congressional district; how are the tallies kept, in lead pencil or ink?—A. They are kept in lead pencil.

Q. Opposite the name of Claude S. Carney, how were they kept?—A. They were kept in lead pencil.

Q. Taking the second precinct of Kalamazoo, take the poll book from the second precinct of the city of Kalamazoo and turn to the official oaths and certificates of officers in that precinct, the first oath, was that signed?—

A. Yes, sir.

Q. By whom?—A. William O'Byrne.

Q. Before whom was it subscribed and sworn to?—A. Before Jesse Wilkins, chairman.

Q. Is that all of the official designation of the person who subscribed that oath?—A. Yes, sir.

Q. Just give it to the stenographer as it was signed.—A. It is signed, "Jesse Wilkins, Ch."

Q. Is that all of the official designation there is?—A. That is all.

Q. Take the next one, what is that?—A. The next oath is the oath of an inspector of election which is signed by Mr. Mahoney.

Q. Before what officer does it purport to be sworn?—A. Subscribed and sworn to before Jesse Wilkins, Ch.

Q. Are all those oaths subscribed to before the same officer in the same way?—A. They are with the exception of the gatekeepers.

Q. Is the first one subscribed by any person?—A. No, sir; it reads, "Sworn and subscribed to before me this 5th day of November, A. D. 1912, Sam R. Fields," but the oath is not signed.

Q. Read the official oath.—A. (Reading:) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State and that I will faithfully discharge the duties of the office of gatekeeper at the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God."

Q. Is that signed by anybody?—A. No, sir. [Reading:] "Subscribed and sworn to before me this 5th day of November, A. D. 1912. Sam Fields."

Q. No official designation?—A. No, sir.

Q. The next oaths?—A. The next oath [reading:] "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of gatekeeper at the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. John Hanson. Subscribed and sworn to before me this 5th day of November, A. D. 1912." Not signed. The jurat is not signed by any official.

Q. Turn to the certificate in the poll book. I wish you would read that certificate.—A. (Reading:) "Whole number of voters voting according to the poll list was _____. Whole number of ballots counted on opening the ballot box was _____. Ballots in excess of the number of voters voting and destroyed was _____. Whole number of ballots corresponding with the poll list was _____. Be it known that immediately upon closing the polls in accordance with the laws of the State of Michigan, this board proceeded to compare the foregoing poll list with its duplicate, and that all mistakes found therein were corrected, and that said poll lists were found to agree. Witness our hands this 5th day of November, A. D. 1912. Jesse Wilkins, G. F. Mahoney, William O'Byrne, F. A. Newall, inspectors of election of the second precinct, held on Tuesday, the 5th day of November, A. D. 1912, county of Kalamazoo, State of Michigan."

Q. Were both of the poll books in that precinct returned?—A. Not to the county clerk.

Q. None were returned to the county clerk nor to the judge of probate?—A. No, sir; no poll book in the judge of probate's office.

Q. In the poll book, I wish you would read the third oath of inspectors—the official oath?—A. (Reading:) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector at the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Frank J. Newall. Subscribed and sworn to before me this 5th day of November, A. D. 1912. Jesse Wilkins, Ch." Next follows the oath of inspector of election

[reading]: "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector at the election held on Tuesday, the _____ day of November, A. D. 1912, according to the best of my ability. So help me God. Jesse Wilkins. Subscribed and sworn to before me this 5th day of November, A. D. 1912. Jesse Wilkins, Ch."

Q. He swore himself?—A. Yes, sir.

Q. What precinct was that?—A. That was the second precinct.

Q. Turn to the poll book, to the official oaths administered to the board of election inspectors. What is the first oath and before whom was that sworn to?—A. It was sworn to before C. L. Miller, city clerk.

Q. Following the certificate of the official oath, take the next one. Was that sworn to before any official?—A. No, sir.

Q. Who was it sworn to before?—A. M. D. Wheeler.

Q. Is there any official designation as to what office M. D. Wheeler held?—A. No, sir.

Q. Take the next oath. Who signed the next oath?—A. Subscribed before M. D. Wheeler.

Q. Who signed it?—A. William C. Lewis.

Q. Before whom did he take the oath?—A. M. D. Wheeler.

Q. Is there any official designation as to who M. D. Wheeler was?—A. No, sir.

Q. Take the next oath. That is the oath of inspectors of election.—A. It is signed by Thomas Hogan.

Q. And sworn to before whom?—A. M. D. Wheeler.

Q. Is there any official designation as to who M. D. Wheeler was?—A. No, sir.

Q. The next oath is what?—A. The oath of clerk of election.

Q. Who signed by?—A. Albert W. Cooley.

Q. Who does it purport to be sworn to before?—A. M. D. Wheeler.

Q. In there any official designation as to who M. D. Wheeler was?—A. No, sir.

Q. The next oath, what is that?—A. That is an oath of clerk of election signed by Guy H. Lockwood and subscribed before M. D. Wheeler.

Q. Does it state what position he held?—A. It does not state.

Q. The next, what is that?—A. Oath of clerk of election.

Q. You had how many clerks in that precinct?—A. It appears they must have had three.

Q. Who is the third signed by?—A. By Otis W. Corwin.

Q. It was sworn to before whom?—A. M. D. Wheeler.

Q. Is there any official designation as to who M. D. Wheeler was?—A. No, sir.

Q. The next oath, what is that?—A. That—the next two oaths are the oaths of gatekeepers of the election.

Q. The man who signed the jurat, is there any official designation to either of those oaths?—A. No, sir; there is not, to either of them.

Q. Turn to the last certificate in the poll book and read the blank certificates that are prepared there for the signatures of the board.—A. (Reading:) "Whole number of voters voting, according to the poll list, was _____. Whole number of ballots counted on opening the ballot box was _____. Whole number of ballots in excess of the voters voting and destroyed was _____. Whole number of ballots corresponding with the poll list is _____. Be it known that immediately upon closing of the polls, in accordance with the laws of the State of Michigan, this board proceeded to compare the foregoing poll list with its duplicate and that all mistakes found therein were corrected and that said poll list is——"

Q. Is that signed by anybody?—A. No, sir.

Q. That certificate in this book is not signed?—A. No, sir.

Q. Do you know whether both poll books were returned, one to the judge of probate and one to the county clerk?—A. No, sir; I do not.

Q. Why can't you tell?—A. There was but one poll book returned to the clerk, and the returns to the judge of probate were not opened.

Q. Is it true that the returns from the third precinct to the board of county canvassers, care of the judge of probate, have not been opened?—A. Yes, sir.

Q. They are unsealed and intact?—A. Yes, sir.

Q. You have the returns here before you, have you, from the third precinct to the board of county canvassers, care the judge of probate?—A. Yes, sir.

Q. Now, you were the clerk of the board of county canvassers?—A. Yes, sir; I was.

Q. Did the board of county canvassers make up their canvass for the office of Congressman from the third district of the State of Michigan, in Kalamazoo County, from this third precinct without examining the returns sent to the judge of probate from that precinct?—A. Yes, sir; they did.

Q. As clerk of that board are you able to state whether or not whether the board of county canvassers did in fact examine those returns that were sent to them from the third precinct to the judge of probate?—A. They did not examine them; no, sir.

Q. Take the fourth precinct of Kalamazoo. I will ask you whether the returns from the fourth precinct to the board of county canvassers were ever examined or opened by the board of county canvassers after the election?—A. From the judge of probate?

Q. Yes, sir.—A. No, sir; they were not.

Q. Are those returns now in your hands?—A. Yes, sir.

Q. With the seals intact?—A. Yes, sir.

Q. Did the board of county canvassers in canvassing the vote for the office of Representative in Congress in the third congressional district of the State of Michigan for the election held November 5, 1912, make out their canvass for the fourth precinct without seeing or examining the returns from the fourth precinct to the board?—A. They examined the returns made to the county clerk's office, but not from the judge of probate's office.

Q. Did they see or could they inspect the returns made from the fourth precinct of the city of Kalamazoo made to the board in care of the probate court?—A. No, sir.

Q. I hand you a poll book of the general election held in the fourth precinct of the city of Kalamazoo, Mich., of the election of November 5 last. See if any of the official oaths—the persons whom they purport to have been sworn—gave any official title to himself or designated himself as any officer.—A. He did not, with the exception of the first oath.

Q. Read the first oath.—A. Oath of inspector of election, signed by C. H. Gill and subscribed and sworn to before C. L. Miller, city clerk.

Q. What is the next oath?—A. The next oath is an oath of inspector of election, signed by James M. Farrell and sworn to before C. H. Little.

Q. Any official designation?—A. No, sir.

Q. The next oath?—A. The rest are all signed in the same way, without any title attached, and sworn to by the same man, without any official designation.

Q. Is that true of the gatekeepers?—A. They were all sworn by the same party, without any official designation.

Q. Taking the tally-sheet book, under the designation of Representative in Congress, the third congressional district, what names do you find opposite that title?—A. John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley.

Q. What is that book; what does it purport to be?—A. It purports to be a tally sheet of the general election held on Tuesday, the 5th day of November, 1912, in the fourth precinct, third ward, of the city of Kalamazoo, Mich.

Q. Opposite the name of John M. C. Smith what do you find in the first column to the right?—A. "Total straight votes, 44."

Q. Total splits?—A. Total split votes, 100; total votes received, 144.

Q. Opposite Claude S. Carney's name?—A. Total straight votes, 102; total split votes, 92; total number of votes received, 194.

Q. I will ask you whether there are any tallies opposite either of those names?—A. No, sir; there are not.

Q. Is that so of the other cases, barren of any tallies?—A. Yes, sir.

Q. There is nothing to show how they were derived?

Mr. ADAMS. I object to that as calling for the conclusion of the witness and as incompetent.

Q. Is there anything on the page to show how those numbers were acquired?—A. No, sir; there is not.

Q. Look at the tally-sheet book; do you find any tallies anywhere?—A. No, sir; no tallies kept in this book.

Q. Take the sixth precinct.—A. The sixth precinct.

Q. Where is the poll book? Take the first oath, who was that signed by?—A. It is signed by Frank Flaitz.

Q. An inspector of election?—A. Yes, sir.

Q. Who was that sworn to before?—A. Before C. L. Miller, city clerk.

Q. What is the next oath?—A. Oath of inspector of election, signed by C. L. Ashley.

Q. How is the jurat?—A. It is not signed.

Q. Take the next oath, what is that?—A. Inspector of election, signed by J. D. Schnell and sworn to before Frank Flaitz.

Q. Any official character to show who Frank Flaitz was?—A. No, sir.

Q. What is the next oath?—A. It is the oath of inspector of election.

Q. Signed by whom?—A. W. A. Balch and sworn to before Frank Flaitz.

Q. Without any official character?—A. No official character.

Q. Take the next oath?—A. The next oath is oath of clerk of election, signed by E. H. Fisher and sworn to before Frank Flaitz, without any official designation.

Q. The next oath?—A. The next oath is clerk of election, signed by L. J. Losinger and sworn to before Frank Flaitz, without any official designation. The oath of gatekeeper of election, signed by John Jabers and sworn to before Frank Flaitz, without any official title. Lewis Fleckenstein was the gatekeeper. Oath of inspector of election, signed by O. W. Brundage and sworn to before ———. This oath reads: "State of Michigan, county of Kalamazoo, ss: I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of ——— at the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. O. W. Brundage. Subscribed and sworn to before me this 5th day of November, A. D. 1912," and sworn to before Frank Flaitz, without any official designation.

Q. Who signed it?—A. Frank Flaitz.

Q. Who signed the oath?—A. O. W. Brundage.

Q. Who signed the certificate in the back part?—A. That was Frank Flaitz and C. H. Ashley, W. A. Balch, O. W. Brundage, and J. B. Smith.

Q. Describe this book.—A. This is the tally-sheet book of the general election held on Tuesday, the 5th day of November, A. D. 1912, sixth precinct, second ward, city of Kalamazoo, Kalamazoo County, Mich.

Q. Turn now to the names marked for Representatives in Congress, third district, and read the candidates' names.—A. John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley.

Q. State whether opposite the name of John M. C. Smith—what are the figures in the right-hand column?—A. Total straight votes, 31; total split votes, 115; total votes received, 146.

Q. Opposite the name of Claude S. Carney?—A. Total straight votes, 76; total split votes, 99; total votes received, 175.

Q. Are there any tallies on the page?—A. No, sir.

Q. Opposite those names?—A. No, sir.

Q. Is there anything in that record to show how they derived those numbers?—A. No, sir; there is not.

Q. Now, the returns from this precinct in Kalamazoo—did the board of county canvassers examine the returns that were sent to the board in care of the judge of probate from the sixth precinct?—A. They did not.

Q. Are the returns from that precinct sent to the judge of probate in your hands now?—A. They are.

Q. Are they still sealed?—A. They are still sealed.

Q. Did they make up the canvass on the office of Representative in Congress without opening or examining the returns from that precinct sent to the board of county canvassers in care of the judge of probate?—A. They did.

Q. Take the seventh precinct and look at the tally sheet. What book have you there, witness?—A. That is the tally-sheet book of the general election held on Tuesday, the 5th day of November, A. D. 1912, in the seventh precinct of the third ward, city of Kalamazoo, Kalamazoo County, State of Michigan.

Q. Turn to the votes for Representative in Congress and read the names of the candidates.—A. John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley.

Q. Opposite the name of John M. C. Smith, what do you find?—A. Total straight votes, 35; total split votes, 122; total votes received, 157.

Q. Opposite the name of Claude S. Carney, what do you find?—A. Total straight votes, 75; total split votes, 121; total votes received, 196.

Q. Are there any tallies in that book to show how they obtained those figures?—A. No, sir; there is not.

Q. Take the poll book from that ward, that precinct; what have you there?—A. That is the poll book of that precinct, third ward.

Q. Take the official oaths; what is the first one you find there?—A. The oath of inspector of election.

Q. Who is that signed by?—A. B. O. Bush.

Q. Before whom was it sworn?—A. C. L. Miller, city clerk.

Q. Take the balance of the oaths for inspectors of election and gatekeepers; is the official character of the one who administered the oath set down in any one of those oaths?—A. No, sir; it is not.

Q. What character of office on that board did Mr. Walton hold; take the oaths signed and the designation to the official oaths?—A. Mr. Walton, I don't see that, I don't—

Q. Does his name appear in any of those oaths connected with the board at all?—A. No, sir; it does not.

Q. Just read who was the first inspector of election.—A. The first inspector is B. O. Bush.

Q. Who next is designated as inspector?—A. W. E. Geary.

Q. Who next?—A. James B. Chase.

Q. Who next?—A. The next is not signed at all; it purports to be sworn to by B. O. Bush.

Q. Any signature under the name there?—A. No, sir; no name at all.

Q. Who next?—A. Hugh W. Nelson.

Q. What is that, clerk of the election?—A. Yes, sir.

Q. What is the next?—A. Clerk of election.

Q. Who?—A. James Prudell.

Q. What next?—A. Arthur Warder.

Q. Sworn to before whom?—A. B. O. Bush.

Q. Is there any designation of the official character of B. O. Bush?—A. No, sir.

Q. Is there anything in the oath showing what official character Warder was filling?—A. No, sir.

Q. Turn over to the next; what is the next oath?—A. Oath of gatekeeper of election.

Q. Who was that?—A. Charles Henshaw, I think; I am not sure.

Q. Who was the next one?—A. George T. Brown, I think it is.

Q. Now turn to the certificate on the back of the poll book; who signed that certificate?—A. B. O. Bush, W. E. Geary, James B. Chase, and J. E. Walton.

Q. Subscribed as what—what do they sign themselves as?—A. Board of election inspectors of the election held Tuesday, the 5th day of November, A. D. 1912, third ward, Kalamazoo.

Q. Do you find this man who signs there as one of the board of inspectors; do you find his name there anywhere in that record as being connected with the board of election; that is, J. E. Walton?—A. No, sir; I do not.

Q. Turn to the ninth precinct.—Yes, sir.

Q. Take the poll book first.—A. Poll book of the general election held on Tuesday, the 5th day of Noaember, A. D. 1912, city of Kalamazoo, ninth precinct, fourth ward, county of Kalamazoo, State of Michigan.

Q. Are any of the official oaths filled out or signed in that book at all?—A. No, sir; not one.

Q. Describe the book you now hold in your hand.—A. It is the tally-sheet book of the general election held on Tuesday, the 5th day of November, A. D. 1912, city of Kalamazoo, in the ninth precinct of the fourth ward.

Q. Turn to Representative in Congress, third congressional district; what names do you find opposite?—A. John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley.

Q. Turn to John M. C. Smith's name; what figures do you find opposite his name?—A. Total straight votes, 53; total split votes, 98; total votes received, 151.

Q. Opposite the name of Claude S. Carney?—A. Total straight votes, 76; total split votes, 99; total votes received, 175.

Q. Are there any interlineations opposite the name of Claude S. Carney?—A. Yes, sir; "total split votes" has been erased.

Q. Do you know how that was changed; can you tell from that?—A. I think it has been erased with a knife.

Q. Can you tell what the original figures were?—A. No, sir; I can not.

Q. Are there any tallies on that page or any other way by which you can tell how they obtained those figures that are set opposite the names of those candidates?—A. No, sir; I can not.

Q. Are there any tallies on the page at all?—A. No, sir.

Q. What book is this?—A. That is the statement book of the general election held on Tuesday, the 5th day of November, A. D. 1912, at Kalamazoo, ninth precinct, fourth ward.

Q. Turn to the statement of the votes—the whole number of votes given for Representative in Congress—what do you find there, how much was it?—A. The whole number of votes given for Representative in Congress—district was 589 in writing and 588 in figures.

Q. It was first written what?—A. First it was evidently written 588.

Q. Is there a line drawn through that 8?—A. Yes, sir; crossed out and a 9 written after.

Q. What are the figures opposite?—A. Five hundred and eighty-eight.

Q. Taking the name of John M. C. Smith—what is written in opposite his name?—A. One hundred and fifty-one and 151 in figures.

Q. Now, take the name of Claude S. Carney—what is written opposite that?—A. One hundred and seventy-five.

Q. What was written before the "5"?—A. I think 174 and the "4" crossed out.

Q. And "5" afterwards put in?—A. Yes, sir.

Q. Is there any interlineation or change in the figures in the right-hand column?—A. I think there is. I think originally it was 171 changed to 175; I think a "4" was put in first, then put over the top; it was 174 and was changed to 175.

Q. Now, in this precinct are there any returns to the judge of probate from that precinct?—A. I think so.

Q. Were they ever unsealed or opened or laid before the board of county canvassers?—A. They were never opened.

Q. Did the board of county canvassers canvass the votes from that precinct for the office of Representative in Congress without examining the returns sent to that board from this precinct?—A. They did.

Q. In care of the judge of probate?—A. Yes, sir.

Q. The tenth precinct, turn to the poll book, what have you there?—A. The poll book of the general election held on Tuesday, November 5, 1912, tenth precinct, fourth ward, city of Kalamazoo.

Q. Turn to the official oaths there; how many oaths of inspectors of election do you find there?—A. There seems to be five.

Q. Who was the first one; who signed first?—A. It is signed by Albert Ten Busschen.

Q. Before whom was it sworn?—A. Before C. L. Miller, city clerk.

Q. Take the next oath.—A. Frank B. Godfrey signed that.

Q. Before whom was it signed?—A. Albert Ten Busschen.

Q. Is there any official designation given to Mr. Ten Busschen?—A. No, sir.

Q. The next; who signed that?—A. I think Almon T. Wells.

Q. Before whom was it sworn?—A. Albert Ten Busschen.

Q. Any official character to his name?—A. No, sir.

Q. Who next?—A. The next one is signed by Paul Schrier and sworn to before Albert Ten Busschen, without any official character.

Q. Read the oath.—A. (Reading:) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of clerk of the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. Peter T. Schwartz." Sworn to before Albert Ten Busschen, without any official character.

Q. What is the next?—A. The oath of clerk of election.

Q. Who signed it?—A. Conrad Kreeling, and sworn to before Albert Ten Busschen, without any official title.

Q. The next?—A. The oath of the clerk of election.

Q. Who was that?—A. It is signed by William H. Donsnuk.

Q. Sworn to before whom?—A. Albert Ten Busschen, without any official title.

Q. Are the oaths to the gatekeepers sworn to before anybody without any official character?—A. No, sir; they are not.

Q. Turn to the last certificate in the poll book; by whom was that signed?—A. That is signed by Albert Ten Busschen, Paul Schrier, Peter T. Schwartz, Frank B. Godfrey, and A. T. Wells.

Q. How many inspectors were there?—A. There are five who signed this.

Q. Now, what is this oath here?—A. It reads, "Oath, Inspector of election."

Q. That heading?—A. It is headed at the top of the page.

Q. What was it originally?—A. Originally it was "Oaths to clerks of election."

Q. What has been erased?—A. The word "Clerk" has been crossed out and the word "Inspector" written above it.

Q. That is the heading of the oath signed by Peter T. Schwartz?—A. Yes, sir.

Q. Take the tally book.—A. This is the tally-sheet book of the general election held on Tuesday, the 5th day of November, A. D. 1912, at the tenth precinct, fourth ward, city of Kalamazoo.

Q. Turn to the place where is recorded the Representatives in Congress, third district; what candidates do you find there recorded?—A. John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley.

Q. Opposite their names do you find certain figures in the right-hand column?—A. Opposite the name of John M. C. Smith I find, total straight votes, 44; total split votes, 71; total votes received, 115. Opposite the name of Claude S. Carney, total straight votes, 71; total split votes, 68; total votes received, 139.

Q. Are there any tallies in that book opposite those names?—A. There isn't any.

Q. Is there anything there to show how they obtained those figures opposite those names?—A. No, sir.

Q. Of each candidate?—A. No, sir.

Q. Did this precinct, the tenth precinct of the city of Kalamazoo, forward any returns to the board of county canvassers in care of the judge of probate?—A. Yes, sir; they did.

Q. Did the board of county canvassers examine those returns?—A. They did not.

Q. Did they canvass the result of the election in this precinct for the office of Congressman without referring to or seeing the returns from that precinct?—A. Yes, sir.

Q. Are those returns now in your hands, sealed?—A. Yes, sir.

Q. All sealed, you say?—A. Yes, sir.

Q. Sealed and intact?—A. Yes, sir.

Q. What books were returned to the county clerk from this precinct?—A. There was a poll book, a tally-sheet book, and a statement of the votes.

Q. Was there any statement book returned to the board of county canvassers, care of the probate judge?—A. No, sir; there was not.

Q. What books did that precinct return to the board of county canvassers in care of the judge of probate?—A. The poll book and the tally-sheet book.

Q. And to the county clerk they sent what?—A. Poll book, a tally-sheet book, and a statement of the votes.

Q. Taking the statement book of the statement of votes cast for Congressmen, do you find any interlineations in the heading, "Whole number of votes cast for Representatives in Congress in the third district" is how many?—A. Three hundred and forty-six.

Q. Opposite the name of John M. C. Smith, what do you find written out?—A. Sixty-three.

Q. How many do you find extended in figures?—A. Sixty-three.

Q. Before the name of Claude S. Carney, what do you find first written?—A. The first that is written is 70 or 71, I think, and it has been crossed off and the word "eighty" written afterwards.

Q. What do you find in the figures extended?—A. In the figures extended I think it has been 71, and they have been erased and changed to 80.

Q. Changed from 71 to 80?—A. Yes, sir; I think so.

Q. Take the poll book—what book is that you now have in your hands?—A. It is the poll book of the general election held on Tuesday, the 5th day of November, A. D. 1912, at the eleventh precinct, in the fourth ward of the city of Kalamazoo.

Q. I will ask you if the official oaths purport to be subscribed by the officers of that election board—if the person before whom those oaths were taken or purport to be sworn gives the official character or designation?—A. They do not, with the exception of the first oath, which is the oath of the inspector of election.

Q. Who is that signed by?—A. C. L. Miller, city clerk.

Q. After that is there any official designation as having administered any oath?—A. No, sir; there is not.

Q. Now, on the first jurat, which was signed by C. L. Miller, city clerk, to that jurat is there any date given?—A. No date in there; no, sir.

Q. Does the book show when that oath purports to have been administered?—A. No, sir; it does not.

Q. What book do you hold now; I refer to the tally sheet book of the eleventh precinct again, and I will ask you opposite the title "Office of Representative in Congress, third district," the names of the candidates, John M. C. Smith,

Claude S. Carney, Levant L. Rogers, and Edward N. Dingley, is that tally kept in ink or lead pencil?—A. It is kept in lead pencil.

Q. The right-hand figures are kept in ink?—A. The figures are kept in ink.

Q. Opposite the name of John M. C. Smith what figures do you find?—A. Opposite the name of John M. C. Smith, total straight votes, 51; total split votes, 12; total votes received, 63. Opposite the name of Claude S. Carney, total straight votes, 62; total split votes, 18; total votes received, 80.

Q. Now, just count up those tallies opposite Claude S. Carney's name and see if they agree in number with the vote or the figures in the right hand column?—A. They do not agree; the tallies show 53 and the figures show 51. The lead-pencil tally shows 53 ballots and the total votes show 53.

Q. The tallies opposite Claude S. Carney's name?—A. The total number of tallies show 80 and the total votes received show 80 in figures.

Q. Take the twelfth precinct.—A. This is the poll book of the general election held Tuesday, the 5th day of November, A. D. 1912, at the twelfth precinct in the city of Kalamazoo.

Q. Does that book contain or purport to the official oaths that were provided for the board of election inspectors?—A. Yes, sir; it does.

Q. By whom is the first one signed?—A. By B. F. Van Blarcom.

Q. Before whom was it sworn?—A. C. L. Miller, city clerk.

Q. The balance of the oaths, was the officer or person before whom those appear to be sworn given any official designation of his character to each particular oath?—A. They do not.

Q. What oaths are there that appear in that way?—A. The oaths of the inspectors of election; no oath to the inspector of election; oath to the clerk of election; none as to the oath to the clerk of election and the oath to the clerk of election.

Q. Three clerks?—A. Yes, sir; and two oaths to the gatekeepers.

Q. Read the first oath to the gatekeeper.—A. (Reading.) "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of gatekeeper of the election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God. W. H. Shakespeare." Sworn to before B. F. Van Blarcom, without any official capacity.

Q. Take the thirteenth precinct; how many tally sheets were returned to the county clerk?—A. One.

Q. Were any returned to the probate court?—A. One tally sheet was returned to the judge of probate.

Q. And one poll book returned to the probate court?—A. Yes, sir.

Q. Is there any certificate to that?—A. No, sir.

Q. Did the board of county canvassers notify this precinct to return the statement book to it?—A. I don't remember that they did.

Q. Was there ever any further return made from this precinct?—A. I don't remember that there was.

Q. From the eleventh precinct—did they send for any statement book from the eleventh; that is, did the board of county canvassers?—A. I couldn't say; my recollection is they sent for the statement book from one of the precincts, but I don't remember what precinct it was.

Q. Did they keep the book?—A. I don't remember as to that.

Q. You don't find it in the files, do you?—A. No, sir; I don't find it in the files.

Q. Take the tally sheet book from this thirteenth precinct, what have you there?—A. This is the tally sheet book from the thirteenth precinct of the fifth ward of the city of Kalamazoo.

Q. How many tallies in that book after the officers?—A. Well, part of the tally blank is left.

Q. Do you find any opposite the name of Representative in Congress, third district?—A. I do not; there are no tallies there.

Q. Is there anything on the book to show how they arrived at those figures you find in the right-hand column?—A. No, sir.

Q. Take the statement book for the office of Congressman for the third congressional district—are there any interlineations or erasures?—A. Yes, sir.

Q. What are they?—A. The whole number of votes given for Representative in Congress, third district, was seven—

Q. Is there something interlined, then scratched out?—A. I should say originally 775, and it has been crossed out.

Q. What was written in finally?—A. Seven hundred and fifty-four.

Q. What do you find opposite the name of John M. C. Smith in words?—A. Opposite the name of John M. C. Smith—I don't know what it is; it looks like 180.

Mr. ADAMS. There is not an H in the whole business, but go ahead.

Q. It is indistinct?—A. Rather indistinct; yes, sir.

Q. As to the total, where the vote is totaled at the lower part, is it plain what the figures are?—A. It is not very plain; there has been an interlineation.

Q. The poll book—the certificate part—is not signed by the board of inspectors; who do you find that signed by?—A. The certificate is signed by Ernest Wise, Mr. Gill, Mr. Eberstein, and Mr. Warder, board of election inspectors.

Q. Turn to the official oaths—who signed those as clerks of the election?—A. L. Roy Darling, E. H. Kimball, Randall Eberstein, and Jay Van Warder.

Q. How many inspectors of election did they have according to this record?—A. Four.

Q. Who were they?—A. Ernest Wise, Earl Lovett, Richard H. Elwell, and the fourth is C. L. Gill.

Q. Now, who are the inspectors who signed the certificate?—A. Ernest Wise, C. L. Gill, Randall Eberstein.

Q. They were clerks, were they not?—A. The last two; yes, sir.

Q. Only two men who signed that purport to be inspectors of election?—A. That is all.

Mr. ADAMS. I object to that; it shows for itself; and move to strike out the answer as the conclusion of the witness.

Q. Two; who were they?—A. Eberstein and Van Worden.

Q. Were they inspectors of election or clerks of election?—A. Mr. Eberstein signed the oath as clerk of the election and Mr. Van Worden signed it as clerk of election; signed the oath.

Q. As far as this record shows, neither of those men were inspectors of election?—A. No, sir.

Q. When those officers you have just mentioned or any of them signed their official oaths before whom were they sworn, did he sign his name officially or designate himself in any way as an officer?—A. He did not; no, sir; with the exception of the first one, Ernest Wise, that was sworn to before C. L. Miller, city clerk.

Q. The fourteenth precinct—what have you in your hand there?—A. Statement of votes at the general election held on Tuesday, the 5th day of November, A. D. 1912, Kalamazoo, fourteenth precinct of the fifth ward, city of Kalamazoo.

Q. Turn to the certificate attached to the statement of votes, and I wish you would read that?—A. (Reading:) "We do hereby certify that the foregoing is a correct statement of the votes given in the fourteenth precinct of the fifth ward, county of Kalamazoo, State of Michigan, at the general election holden on Tuesday, the 5th day of November, A. D. 1912. Henry A. Davis, Inspector of election."

Q. Was he all the person who signed that certificate?—A. Yes, sir.

Q. That is all the certificate of the votes cast in that precinct?—A. Yes, sir.

Q. Was that certificate received by the county clerk of that precinct?—A. Yes, sir.

Q. Turn to the poll book of that precinct?—A. Poll book of the general election held on Tuesday, the 5th day of November, A. D. 1912.

Q. That is the one you received?—A. Yes, sir.

Q. Turn to the first page of the official oaths, do you find there any oath of office? Take the first one, what is that?—A. That is the oath of an inspector of election.

Q. By whom signed?—A. Roland K. Fairchilds.

Q. Before whom was it subscribed and sworn?—A. C. L. Miller, city clerk.

Q. Any official designation to the jurat?—A. No, sir.

Q. By whom is the next oath signed?—A. Herbert E. Conlan.

Q. Does it purport to have been sworn to before any officer?—A. No, sir.

Q. The next one?—A. H. L. Schroeder.

Q. Does it purport to be signed by any officer?—A. It is not.

Q. Take the next one, by whom signed?—A. H. M. Collins.

Q. Before whom does it purport to be signed?—A. Nobody.

Q. What oath is that?—A. Oath of election inspector of William C. Fisk.

Q. Any jurat?—A. No, sir.

Q. The next oath?—A. The next is the oath of clerk of election and is signed by George C. Thayer.

Q. Is it sworn to before any officer?—A. It is not.

Q. The next?—A. The oath of gatekeeper at the election. That is signed by William H. Winter.

Q. Is it sworn to before any officer?—A. It is not.

Q. Take the next?—A. That is the office of gatekeeper at the election of O. C. Slack.

Q. Is that sworn to before any officer?—A. It is not.

Q. The next?—A. That is the oath of inspector of election, by Henry A. Davis.

Q. Is that sworn to before any officer?—A. No, sir.

Q. What is the next?—A. That is not signed.

Q. Witness, take the fourteenth precinct, was that returned to the board of county canvassers in care of the judge of probate?—A. Yes, sir.

Q. Has that ever been opened?—A. It has not.

Q. The seal still intact on it?—A. Yes, sir.

Q. Did the board of county canvassers canvass the vote for the office of Representative in Congress from the fourteenth precinct without examining or referring to the returns which had been made to that board from the fourteenth precinct?—A. They did; yes, sir.

Q. The poll book from that ward was not filled out at all; the certificate is blank?—A. The certificate is blank.

Q. Take the township of Texas. I will ask you now if the township of Texas made a return to the board of county canvassers in care of the judge of probate?—A. I don't think they did; no, sir. I don't seem to have it here, and I have got all the returns here as far as I know, and I do not see it here.

Q. Have you the statement book?—A. I have the statement book from the township of Texas.

Q. Look at that and see how it was kept, whether in ink or not?—A. It was kept in ink.

Q. How is it signed?—A. It is signed in lead pencil. The certificate is signed by William Walker and Charles Rea and William J. Campbell.

Q. The entire record is in lead pencil?—A. The entire record is in lead pencil.

Q. Taking the official oaths in the poll book. What book is that you have?—A. This is the poll book from the township of Texas.

Q. What election?—A. The general election held on Tuesday, November 5, 1912.

Q. Turn to the official oaths in the record and see whether written in pencil or ink.—A. They are all written in pencil.

Q. Take the first oath—before whom was that sworn?—A. Sworn to before William Wallen, I think.

Q. Are any of the oaths subscribed by anyone who affixes any official designation to his name?—A. There is not; no, sir.

Q. How many of the official oaths are filled out in that township?—A. Seven.

Q. Are any of those seven oaths of which the official character is given of the person before whom the oath purports to have been sworn?—A. There is not; no, sir.

Q. Brady Township, first precinct. Did the first precinct of Brady Township make return to the board of county canvassers, care of the judge of probate?—A. Yes, sir.

Q. Have those returns ever been opened?—A. No, sir; they have not.

Q. The board of county canvassers canvassed the vote for Congressman from that precinct without reference to those returns or opening them?—A. They did; yes, sir.

Q. Brady Township, second precinct. What do you hold in your hand now?—A. The poll book of the general election held on Tuesday, the 5th day of November, 1912, second precinct, township of Brady, county of Kalamazoo, State of Michigan.

Q. Turn to the official oaths. Do you see there what purports to be the blanks prepared for the board of inspectors to sign? Take the first blank oath of inspectors of election—who is that signed by?—A. By W. J. Reese.

Q. Is that sworn to before any officer?—A. It is not.

Q. Take the next—who is that signed by?—A. A. W. Potter.

Q. Following his name reads what?—A. Sworn to before me this 5th day of November, 1912. W. J. Reese.

Q. Any official character?—A. No, sir.

Q. The next?—A. The next is for inspector of election, signed by W. H. Beebe. Subscribed and sworn to before me this 5th day of November, A. D. 1912; signed by W. J. Yates.

Q. Is there any official designation?—A. No, sir. The next is the oath of the clerk of election.

Q. That is signed by whom?—A. That is signed by R. B. Irvine. Subscribed and sworn to before me this 5th day of November, A. D. 1912, by W. J. Yates.

Q. Any official designation?—A. No, sir.

Q. The next one?—A. That is the oath of clerk of election, signed by D. O. Goldsmith. Subscribed and sworn to before me this 5th day of November, A. D. 1912, W. J. Reese.

Q. Without any official designation?—A. Without any official designation.

Q. What is the next oath?—A. That is the oath of gatekeeper at the election, signed by Lewis Riggles. Subscribed and sworn to before me this 5th day of November, A. D. 1912, W. J. Yates. The next is the oath of gatekeeper at the election, and it looks like George Huntington. Sworn and subscribed to before me this 5th day of November, A. D. 1912, signed by W. J. Yates.

Q. Now, take Ross Township. Take Ross Township and the returns to the judge of probate of the election held on Tuesday, the 5th day of November, A. D. 1912, were those returns opened or examined by the board of county canvassers?—A. No, sir; they were not.

Q. So the votes for Congressman at that election were canvassed without examining or opening the returns made to that board by the township of Ross?—A. Yes, sir; it was.

Q. Do you hold those returns in your hand?—A. Yes, sir.

Q. They are sealed and intact?—A. Yes, sir.

Q. What book have you there?—A. Poll book of the general election held on Tuesday the 5th day of November, 1912, at Augusta, in the township of Ross, Kalamazoo County, Mich.

Q. Look at the last certificate in the book?—A. The last certificate is left blank.

Q. What is that certificate?—A. Whole number of electors voting according to the poll list ———. Whole number of votes counted on opening the ballot box was ———. Blank ballots in excess of the number of voters voting and destroyed was ———. All left blank. Be it known that immediately upon closing the polls in accordance with the laws for the State of Michigan, this board proceeded to compare the foregoing poll list with this duplicate, and that all mistakes found were corrected, and said 11 lists were ——— agree.

Q. Take Cooper Township, did that township make a return of the general election held in that township on the 5th day of November, 1912, to the judge of probate?—A. Yes, sir; they did.

Q. Did the board of county canvassers examine those returns when they canvassed the votes for Congressman from that precinct?—A. They did not.

Q. Have you in your hands those returns?—A. Yes, sir.

Q. Have they ever been opened?—A. No, sir.

Q. Are they sealed and intact?—A. They are; yes, sir.

Q. Look at the poll book. Did the board of county canvassers canvass the votes for Congressman from the township of Cooper without opening or examining the returns sent to that board from the township of Cooper?—A. They did; yes, sir; from the judge of probates.

Q. Wakeshma Township. What is that?—A. The poll book of the general election held on Tuesday, the 5th day of November, 1912, at Fulton, in the township of Wakeshma, county of Kalamazoo, Mich.

Q. Turn to the first page and take the second oath and read it?—A. Oath of inspector of election. "State of Michigan, county of Kalamazoo, ss. I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duty of the office of inspector of election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God." Signed by A. R. Mosgrove, I would call it.

Q. Read the jurat?—A. "Subscribed and sworn to before me this 5th day of November, A. D. 1912." Signed by Otis Cramer.

Q. Is there any official character designated?—A. There is not; no, sir.

Q. Take the next oath, what is that?—A. Inspector of election.

Q. Who is that signed by?—A. Elias France.

Q. Is there any official character by the person who it purports to be sworn to before?—A. There is not; no, sir.

Q. Take the oaths of the gatekeepers. How many are there of them?—A. There are two.

Q. Who signed the first one?—A. Charles H. Sweet.

Q. Any jurat?—A. "Subscribed and sworn to before me this 5th day of November, A. D. 1912." Signed Otis Cramer.

Q. Who is the next one signed by?—A. It is signed by A. R. Mears and sworn to before Otis Cramer.

Q. Is there any official character or designation of the person who administered those oaths?—A. No, sir; in neither case.

By Mr. FELLOWS:

Q. I ask you what this book is that I show you?—A. That is the record of the board of election inspectors.

Q. Of what county?—A. Kalamazoo County.

Q. What election?—A. Of the election held on the 5th day of November, 1912.

Q. I show you page 12 thereof and ask you if on that page you find the votes on candidates for Congress in the third congressional district?—A. Yes, sir; I do.

Q. I ask you to read the vote, so far as John M. C. Smith and Claude S. Carney are concerned, from the following precincts: Comstock, second precinct?—A. John M. C. Smith received 486 and Claude S. Carney received 636.

Q. The township of Cooper?—A. The township of Cooper, John M. C. Smith received 42 and Claude S. Carney received 70.

Q. Kalamazoo Township?—A. John M. C. Smith received 108 and Claude S. Carney received 117.

Q. Township of Ross?—A. John M. C. Smith received 84 and Claude S. Carney received 106.

Q. Township of Schoolcraft, first precinct?—A. John M. C. Smith received 126 and Claude S. Carney received 133.

Q. Township of Texas?—A. John M. C. Smith received 55 and Claude S. Carney received 66.

Q. Wakeshma?—A. John M. C. Smith received 80 and Claude S. Carney received 122.

Q. Alama?—A. John M. C. Smith received 59 and Claude S. Carney received 82.

Q. Township of Brady, first precinct?—A. John M. C. Smith received 68 and Claude S. Carney received 79.

Q. Township of Brady, second precinct?—A. John M. C. Smith received 41 and Claude S. Carney received 45.

Q. Township of Charleston?—A. John M. C. Smith received 52 and Claude S. Carney received 73.

Q. City of Kalamazoo, first precinct?—A. John M. C. Smith received 93 and Claude S. Carney received 140.

Q. City of Kalamazoo, second precinct?—A. John M. C. Smith received 124 and Claude S. Carney received 193.

Q. City of Kalamazoo, third precinct?—A. John M. C. Smith received 113 and Claude S. Carney received 122.

Q. City of Kalamazoo, fourth precinct?—A. John M. C. Smith received 144 and Claude S. Carney 194.

Q. City of Kalamazoo, sixth precinct?—A. John M. C. Smith received 146 and Claude S. Carney received 175.

Q. City of Kalamazoo, seventh precinct?—A. John M. C. Smith received 157 and Claude S. Carney received 196.

Q. City of Kalamazoo, ninth precinct?—A. John M. C. Smith received 151 and Claude S. Carney received 175.

Q. Kalamazoo City, tenth precinct?—A. John M. C. Smith received 115 and Claude S. Carney received 139.

Q. City of Kalamazoo, eleventh precinct?—A. John M. C. Smith received 63 and Claude S. Carney received 80.

Q. City of Kalamazoo, twelfth precinct?—A. John M. C. Smith received 73 and Claude S. Carney received 122.

Q. City of Kalamazoo, thirteenth precinct?—A. John M. C. Smith received 160 and Claude S. Carney received 250.

Q. City of Kalamazoo, fourteenth precinct?—A. John M. C. Smith received 100 and Claude S. Carney received 179.

Q. Those votes you have given made up the total vote returned to the secretary of state from this county?—A. Yes, sir.

Mr. MAYNARD. You received the returns, did you, from those different voting precincts of the county; they were sent to you after this election?

A. Yes, sir.

Q. Were those returns received all intact?—A. No, sir; they were not.

Q. What conditions were some of the returns that you received in?—A. Well, I couldn't remember definitely; but I remember of seeing one that the seal was broken—what we call mail pouches; the seal was broken—I don't remember what township that was from.

Q. You mean these large envelopes that the returns were contained in?—A. Yes, sir.

Q. Was there any more than the one?—A. I don't recollect of only one.

Q. Do you remember what precinct that was from?—A. No, sir; not at the present time; at that time I knew, but I don't remember now what precinct that was from.

(Whereupon the hearing was adjourned until 1 o'clock p. m., Wednesday, April 9, 1913.)

WEDNESDAY, APRIL 9, 1913.—1 O'CLOCK P. M.

EDWARD F. CURTENIUS was recalled for cross-examination by Mr. Adams, as follows:

Q. I suppose you had the Alamo poll book. Referring to Exhibit 74, the poll book of Alamo Township, to which you referred yesterday in your testimony on direct, I ask you to look at the signature, Robert J. Coshun, to the jurat, to the oath made by A. Peck, and see whether or not that, in your judgment, is the same signature of Robert J. Coshun as appears on the first page of this exhibit and the Robert J. Coshun who signed the oath of inspector?

Mr. MAYNARD. Objected to as incompetent, irrelevant, and immaterial.

Mr. ADAMS. I am going to show that the inspector swore that man, as he had a right to under the statute.

A. I think it is the same signature.

Q. Robert J. Coshun appears to have administered the oath to the gatekeeper, A. Peck, to this exhibit?—A. Yes, sir.

Q. Robert J. Coshun appears by this exhibit to have made an oath there to act as inspector of the election?—A. Yes, sir.

Mr. MAYNARD. Objected to as incompetent and immaterial.

Q. Robert J. Coshun appears by this exhibit to have been sworn by A. Peck?

Mr. MAYNARD. Objected to as incompetent and immaterial.

Q. Is that true?—A. Yes, sir.

Q. And the certificate that Robert J. Coshun signed to the oath to act as inspector is the first certificate in this book, isn't it?—A. Yes, sir.

Q. And the certificate of A. Peck sworn to before Robert J. Coshun is the last certificate of the officers of election in this book?—A. Yes, sir.

Q. Exhibit 75 and 76, respectively, being the tally-sheet books of the November 5, 1912, election—general election—held in the township of Alamo as far as the votes recorded therein for Representative in Congress, third district, here in each book, the figures are the same, are they not of the different candidates for Representative in Congress?—A. Not exactly.

Q. So far as John M. C. Smith and Claude S. Carney are concerned?—A. I think they are; yes, sir.

Q. And the total vote in that township as shown by each of these poll books, or tally-sheet books, for John M. C. Smith show what?—A. Fifty-nine.

Q. The total vote for John M. C. Smith, as shown in the statement book of the votes at that election in that township, are 59?—A. Yes, sir.

Q. The total vote for Claude S. Carney, as shown by these tally-sheet books, in that township was 82 in each of the books, is it not?—A. Yes, sir.

Q. And the total vote carried into the statement book of that township for Claude S. Carney was 82, was it not?—A. Yes, sir.

Q. You, as county clerk, received the returns of that November 5, 1912, election from every township and every voting precinct in this county, didn't you?—A. Yes, sir; I did.

Q. From the respective election boards?—A. I did.

Q. So that you had for the board of county canvassers when they met following that particular election the returns from every township and voting precinct in Kalamazoo County in which an election was held November 5, 1912?—A. Yes, sir.

Q. When that board of county canvassers convened the ——— of that November 5, 1912, election—general election—and particularly to canvas the vote for Congressman in the third congressional district you had for that canvassing board the election returns from every election board in every precinct and township in the county of Kalamazoo, didn't you?—A. Yes, sir; I certainly did.

Q. And they made their canvass from those returns that came into your office as county clerk?—A. They did.

Q. The board of county canvassers in canvassing that vote of the November 5, 1912, election held in this county did not use the returns that had been sent of that election to the judge of probate in making the canvass?—A. Well, they compared them up with part of the returns made to the judge of probate's office.

Q. But in making their canvass they canvassed the vote and determined the vote, determined their canvass by the returns that had been sent to you as county clerk from the various precincts in this county? Didn't you so testify this morning?—A. I think that is a fact.

Q. When your board of county canvassers met to canvass the votes cast at that election, the question of the right of the board to canvass the vote from the returns in the judge of probate's office came up, didn't it?—A. Yes, sir.

Mr. MAYNARD. Objected to as incompetent and immaterial.

Q. And the board decided that it had no right to determine its canvass from the returns made to the judge of probate's office, did it not, the board of county canvassers?—A. Well, they discontinued opening any of those returns; whether they decided they had no right or not I couldn't say, they simply paid no more attention to the returns filed with the judge of probate.

Q. You were the clerk of the board of county canvassers?—A. Yes, sir.

Q. When the board was in session you knew that the statute of this State provided that the board of county canvassers should proceed without delay to canvass the returns of the votes cast for the candidates for office voted for and all other questions voted on at said election, according to the returns found in the office of the county clerk from the said several boards of election inspectors of the various voting precincts in the county?—A. I had read that law; yes, sir.

Q. While this board of county canvassers was in session canvassing the November 5, 1912, vote they had their sessions in your office in the courthouse at Kalamazoo?—A. Yes, sir; they did.

Q. While that board was in session there was a contest on between Lynn B. Mason, candidate for judge of probate, and Samuel Van Horn, Democratic candidate for judge of probate, in this county, was there not?—A. Yes, sir.

Q. There was a recount of the votes cast at that November 5, 1912, election in each precinct in the county of Kalamazoo, was there not?—A. Yes, sir.

Q. And each ballot box containing the votes that had been cast for the different candidates at that November 5, 1912, election was brought to your office by the several election boards or by a member from each one of the voting precincts, and the ballot boxes were opened and the votes counted by the board of county canvassers; is not that true?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. Yes, sir; that is true.

Q. Whatever election return books were in those ballot boxes that were opened by that board were taken out of the ballot boxes, were they not?

Mr. MAYNARD. Objected to as incompetent and immaterial.

A. My impression is they were. I think they took them out.

Q. And the ballots were taken out?—A. Yes, sir.

Q. And they were recounted by the board of county canvassers?—A. They were; yes, sir.

Q. Now, have you your canvassing book here?—A. Yes, sir.

Q. What was done then after that recount on the judge of probate was had with the ballots that had been taken from those ballot boxes and the books that had been taken from those ballot boxes by the board of county canvassers in making that recount?

Mr. MAYNARD. I would like to ask one question.

Q. Did this recount of this contest we are now talking about in any way involve the vote for the office of Congressman?—A. No, sir.

Mr. MAYNARD. I object to it as incompetent and immaterial.

By Mr. ADAMS:

Q. The books, as well as the ballots, that were in those ballot boxes that were opened for that recount on judge of probate also contained—that is, the books did—whatever was in those ballot boxes, the record of the vote on Congressman in the third congressional district, and the ballot boxes contained the ballots that were voted for Congressman in the third congressional district, didn't they?—A. I suppose they did.

Mr. MAYNARD. I object to that as incompetent and immaterial, there being no claim that that recount in any way involved the question of the contestant or contestee in this inquiry, and that any changes or alterations in the books does not affect the record made on the congressional election; the returns have been made to the board and do not affect some other office.

Q. The different candidates for judge of probate voted for at that November 5, 1912, election in this county were on one and the same ballot that the different candidates' names were for the office of Representative in Congress in the third congressional district?—A. Yes, sir; they were.

Mr. MAYNARD. Objected to as incompetent and immaterial.

Q. And the same election returns, tally-sheet books, statement books, and poll books were used for recording the names and votes of the different candidates for judge of probate and for the candidates for Representative in Congress at that election?

Mr. MAYNARD. Objected to as incompetent and immaterial and not the best evidence.

A. Yes, sir; they were.

Q. These very tally sheets you have here from the township of Alamo to your election board, as well as the statement books from the township of Alamo, to which your attention has been called, contain the names of the different candidates for judge of probate and every other county officer voted for at that election that the candidates for Congress were voted for?—A. I didn't examine those.

Q. Look at them now and see whether that is not true.—A. Well, I don't think it is, because we have two tally sheets right here and one could not be in the box.

Q. I didn't ask you anything about the books; I asked you whether those tally sheets before you do not show that as well as the statement books.—A. There are two tally sheets and two statement sheets and two poll books. I have the two tally sheets, statement book, and poll book here.

Q. I ask you now whether those books you have before you do not show just exactly what I asked you in that question?—A. I don't understand that exactly. Yes; I suppose they are.

Q. Aren't they? I am talking about those books before you.—A. I think they do.

Q. Those books from the township of Alamo, the statement book and tally sheet book, contain not only every candidate who was voted for at that election, but for every county officer in this county, the different officers voted for for State offices, as well as the different candidates voted for for Representative in Congress in the third congressional district?—A. Yes, sir.

Q. You ran for county clerk last fall, didn't you?—A. Yes, sir.

Q. It contains your name?—A. I suppose it does.

Q. They do, don't they?—A. I think they do; I don't know that I have examined them to see.

Q. Look at them and see.—A. I don't think there is any question about it.

Mr. MAYNARD. I object to lumbering up the record with matters entirely outside of the point at issue.

The WITNESS. Yes, sir; that seems to be right.

Q. They contain your name?—A. Yes, sir.

Q. And the different candidates for office and for the office of county clerk; it contains your name?—A. Yes, sir.

Q. You were a candidate for office at that election?—A. Yes, sir.

Q. On the Republican ticket?—A. Yes, sir.

Q. Now refer to Prairie Ronde.

Mr. MAYNARD. We raise no question as to Prairie Ronde.

Mr. ADAMS. If that is true, I don't care about that.

Q. The first precinct of the city of Kalamazoo is the next?—A. I have it.

Q. Let me take the poll book. Clarence L. Miller was city clerk of the city of Kalamazoo just before the 5th of November, 1912?—A. Yes, sir; he was.

Q. Now, as shown by the poll book from the first precinct of the city of Kalamazoo at the November 5, 1912, election, Irving M. Stimson was sworn as an inspector of election by Clarence L. Miller, city clerk; does that appear in that book?—A. Yes, sir.

Q. Clarence L. Miller is under the jurat there, and there is attached to his name the words "city clerk"?—A. Yes, sir.

Q. The figures in the tally-sheet book from the first precinct at that election in Kalamazoo, and the figures in the statement book of that precinct No. 1, of the city of Kalamazoo, of that same election, show the number of votes cast for Claude S. Carney in each book for Representative in Congress to be 140, don't they?—A. Yes, sir.

Q. For John M. C. Smith in each book, 93?—A. Yes, sir; 93.

Q. And the statement book contained in the envelope sent to the judge of probate and the statement book sent to the county clerk of that election in that precinct show the footing to have been in each one of those statement books, 93 for John M. C. Smith and 140 for Claude S. Carney for Representative in Congress?—A. Yes, sir.

Q. Now get the second precinct.—A. There it is.

Q. In the poll book returned to you of this election in question from the second precinct of Kalamazoo—the board of inspectors of the second precinct of the city of Kalamazoo—the signature on the final certificate of Jesse Wilkins is the same signature of Jesse Wilkins that appears to be under each jurat to the oaths of the inspectors and clerks of that election, as shown by that book that I hand you? Is not that so?—A. I should think it was; yes, sir.

Q. On the final certificate to that poll book that same signature of Jesse Wilkins appears opposite the bracket that shows that they signed there their names as inspectors of that election?—A. Yes, sir.

Q. In the third precinct. I call your attention to the poll book, a part of the returns returned to your office by the election board of that election in question in this controversy, the first oath of office there was signed by M. D. Wheeler as an inspector of that election? Isn't that so?—A. Yes, sir; that is so.

Q. The jurat to the oath that Mr. Wheeler took is signed by Clarence L. Miller, city clerk?—A. By Clarence L. Miller; yes, sir.

Q. Now, M. D. Wheeler, according to that book, administered the oath to every inspector and every clerk and every gatekeeper as appears by that book, did he not?

By Mr. MAYNARD:

Q. It does not show in what capacity he administered the oaths?—A. Yes; it does.

By Mr. ADAMS:

Q. That signature of M. D. Wheeler is the same signature. Isn't it, that you find under the first oath that was taken there, the oath of inspectors, signed M. B. Wheeler and sworn to by Clarence L. Miller, city clerk?—A. Yes, sir.

Q. Mr. Wheeler, according to that poll book, was an inspector of election that day?—A. Yes, sir.

Q. There is no question in your mind M. B. Wheeler's signature under the oath that Mr. Wheeler appears to have taken to that poll book and the signature of M. B. Wheeler under every jurat is one and the same signature?—A. Yes, sir; it is.

Q. There is no question about it?—A. No question at all.

By Mr. MAYNARD:

Q. Is there a certificate there to that poll book?—A. There is a blank certificate there.

Q. Read the words of that certificate.—A. (Reading:) "Whole number of voters voting according to the poll list was _____. Whole number of votes counted on opening the ballot box was _____. Ballots in excess of the number of voters voting and destroyed was _____. Be it known that immediately upon closing the polls, in accordance with the laws of the State of Michigan, this board proceeded to compare the foregoing poll list with this duplicate, and that all mistakes found therein were corrected, and said poll lists were _____, according to the laws of 1891, act 109, section 16. Witness our hands this day of _____."

Q. Is that signed at all?—A. No, sir.

By Mr. ADAMS:

Q. I show you the statement book returned to your office by the election board of the third precinct of the city of Kalamazoo of that election in question in this controversy and call your attention to the certificate, which includes all matters set forth in this statement book, and ask you to read that certificate.—A. (Reading:) "We do hereby certify that the foregoing is a correct statement of the votes given in the third precinct of the first ward of the city of Kalamazoo, Kalamazoo County, State of Michigan, at the general election holden on Tuesday, the 5th day of November, A. D. 1912. M. D. Wheeler, Roy A. Terpenning, L. C. Lewis, Thomas Vogen, inspectors of election."

Q. M. B. Wheeler, R. A. Perpenning, William C. Lewis, and Thomas Vogen are the same signatures that you find attached to the end of the oaths of the inspectors contained in the poll book of that precinct, are they not?—A. Yes, sir; I think they are.

Q. Get the fourth precinct. I call your attention next to the poll book of this election in question returned to your office by the election board of the fourth precinct of the city of Kalamazoo. Look at that book, the first oath of inspector of election contained therein, that is signed by C. H. Little?—A. Yes, sir.

Q. And the jurat under the oath of C. H. Little is signed by Clarence L. Miller, city clerk?—A. Yes, sir.

Q. The next oath is signed by Thomas M. Carroll?—A. Yes, sir.

Q. The next by McQuigg?—A. Yes, sir.

Q. The next by Frank D. Stevens?—A. Yes, sir.

Q. The first oath of the clerk in the poll book is signed by John E. Crose?—A. Yes, sir.

Q. The next by Charles M. Bennett?—A. Yes, sir.

Q. The next oath of clerk is by E. J. Robbins?—A. Yes, sir.

Q. Each one of the jurats to those oaths of inspectors except the first one is signed with the name of C. H. Little?—A. Yes, sir.

Q. Without any designation under the name of C. H. Little as to his official capacity?—A. Yes, sir.

Q. The name of C. H. Little you find to those jurats, except the first one, is the identical signature that you find of C. H. Little under the first oath as inspector, isn't it?—A. Yes, sir.

Q. The same handwriting?—A. Yes, sir; identically the same.

Q. You know C. H. Little, don't you?—A. Yes, sir.

Q. And have known him for a number of years?—A. Yes, sir.

Q. He is the same man who was sworn here yesterday, is he not?—A. I don't know as to that; I was not here.

Q. I call your attention to the tally-sheet book returned to your office from that fourth precinct by that same election board of that same election. You were asked yesterday, I think, whether there were any tally marks on that book opposite the names of the different candidates for the office of Representative in Congress, and you said there were no tallies?—A. I was asked that to-day.

Q. You testified that there were no tally marks there?—A. No tally marks there.

Q. The names of the different candidates for Representative in Congress in the third congressional district are written in ink?—A. Yes, sir.

Q. The total straight votes, the total split votes and the total votes received opposite each candidate for Representative in Congress are also written in ink?—A. Yes, sir.

Q. But no tally marks?—A. No tally marks.

Q. It is not the practice to put down tally marks showing the number of straight votes on these tally-sheet books, is it?—A. No, sir; I don't think it.

Q. I show you now the tally-sheet book and the statement book of this election in question returned to your office by the election boards of the fourth precinct, city of Kalamazoo, and direct your attention especially to that part of this book which shows the number of votes cast for the different candidates for Representative in Congress. In each one of these books the total number of votes recorded and entered for John M. C. Smith for Representative in Congress is 144, is it not?—A. Yes, sir.

Q. The total number of votes recorded for Claude S. Carney is 194?—A. Yes, sir.

Q. In each book?—A. Yes, sir.

Q. Entered therein in ink?—A. Yes, sir.

Q. In each instance?—A. Yes, sir.

Q. In that book?—A. Yes, sir.

Q. That is true?—A. Yes, sir.

Q. There have been no changes, no erasures, no corrections in these figures here?—A. No, sir.

Q. In either of these books?—A. No, sir.

Q. Referring to the poll book of that particular precinct last inquired about, the final certificate in that book is signed by C. H. Little, Mc. Quigg, M. D. Stevens, and Thomas M. Carroll, board of election inspectors of the fourth precinct, second ward, city of Kalamazoo, is that correct?—A. Yes, sir.

Q. Now in the sixth precinct?—A. The sixth precinct of the second ward.

Q. The tally book or poll book?—A. There it is.

Q. Referring to the poll book from the sixth precinct of the second ward of the city of Kalamazoo of this election in question returned to your office, the first oath of inspector there is signed by Frank Flaitz?—A. Yes, sir.

Q. The jurat is signed by Clarence L. Miller, city clerk?—A. Yes, sir.

Q. Now, to the jurat signed by J. B. Schell, inspector, and under the jurat signed by W. A. Balch as inspector, and under the oath signed by E. H. Fisher as clerk and under the name of William J. Lonsbury as clerk of the election, the name of Frank Flaitz is signed?—A. Yes, sir.

Q. Under the jurat?—A. Yes, sir.

Q. Likewise the name of Frank Flaitz is signed under the jurat to the name of O. W. Brundage, who took an oath there as inspector?—A. Yes, sir.

Q. Frank Flaitz's name is signed under the jurat to the name of John Yager, who took an oath as gatekeeper?—A. Yes, sir.

Q. Frank Flaitz's name is signed to the jurat to the name of L. Flickenstein, gatekeeper?—A. Yes, sir.

Q. Then the name Frank Flaitz is the identical signature, is it not, of the Frank Flaitz that appears under the oath of inspector, signed by Frank Flaitz?—A. Yes, sir.

Q. The first oath in this book?—A. Yes, sir.

Q. And the final certificate in this poll book is signed by Frank Flaitz to the jurats to O. W. Brundage and J. B. Schell, inspectors of election, held on the 5th day of November, 1912, in the city of Kalamazoo?—A. Yes, sir.

Q. Those are the same signatures, respectively, as appear here in these different places, these different oaths, to which your attention has been called?—A. I think they are the same signatures; yes, sir.

Q. The tally-sheet book of that sixth precinct returned to your office of this election in question, you testified this morning, had no tally marks opposite the names of the different candidates for Representative in Congress?—A. I think I did; yes, sir.

Q. The figures are recorded under the heading preceding those names, "Total straight votes," "Total split votes," and "Total votes received," are they not — A. Yes, sir.

Q. In ink?—A. Yes, sir.

Q. John M. C. Smith, opposite his name "total straight votes, 31"?—A. Yes, sir.

Q. Opposite the name of John M. C. Smith "total split votes, 115"?—A. Yes, sir.

Q. Opposite John M. C. Smith's name "total votes received, 146"?—A. Yes, sir.

Q. Opposite the name of Claude S. Carney "total straight votes, 76"?—A. Yes, sir.

Q. Opposite the name of Claude S. Carney "total split votes, 99"?—A. Yes, sir.

Q. Opposite the name of Claude S. Carney "total votes received, 175"?—A. Yes, sir.

Q. They are all in ink?—A. Yes, sir; all in ink.

Q. They do not appear changed, erased, or in any way altered?—A. No, sir.

Q. All these different election returns to which your attention has been directed this morning by counsel on the other side—they are all in the same shape they were when returned to your office by the several election boards that returned them to you, are they not?—A. I think they are; yes, sir.

Q. You have taken pains with them to see they were kept so that no changes, erasures, or corrections were made in them?—A. Yes, sir; I don't think there have been any changes made.

Q. The votes for John M. C. Smith, total votes, in this poll book that your attention was directed to just now, in this sixth precinct, the total vote for John M. C. Smith, as shown in the statement book in the sixth precinct at that election, are just the same in number, 146?—A. Yes, sir.

Q. Just the same in each book for Claude S. Carney—175?—A. Yes, sir.

Q. When these different returns came into your office, these election returns, which you have testified about here on the direct examination on Congressman, all the election returns that were returned to your office as county clerk in this county of that November 5, 1912, election—they were sealed when they came to your office?—A. With the exception of one; I recollect that one seal was broken when the mail man left it.

Q. With that one exception, all the rest of them were sealed?—A. I couldn't say as to that; I recollect of one.

Q. That is your recollection now?—A. As far as I can remember, that is the case.

Q. You didn't break those seals, did you, before the board of county canvassers met?—A. No, sir; I didn't break any of the seals.

Q. You kept them intact, just as they came to your office, until the board of county canvassers met?—A. As near as I could; yes, sir.

Q. Well, the seals were broken, except, as you recall now, on one of them, one envelope, by the board of county canvassers or in its presence?—A. Yes, sir.

Q. Take the seventh precinct now?—A. Here it is.

Q. Let me see the tally-sheet book and the poll book. Referring to the poll book now of this election in question in the seventh precinct in the city of Kalamazoo, the first oath in the book is the oath of an inspector?—A. Yes, sir.

Q. That oath is signed by B. O. Bush?—A. Yes, sir.

Q. At the end of that oath it is—the jurat to that oath is signed by Clarence L. Miller, city clerk?—A. Yes, sir.

Q. Now, every certificate there—every oath rather—of the inspectors, namely, W. E. Geary, James B. Chase, and the oaths to the two clerks and the oath to Charles Henshaw, gatekeeper, and the oath to George T. Brown, gatekeeper, in each instance the jurat under those oaths is signed by B. O. Bush?—A. Yes, sir.

Q. Without any official designation under the name of B. O. Bush?—A. Yes, sir.

Q. That name B. O. Bush that you see to those different jurats to these different oaths is the identical signature of B. O. Bush which you find under the first oath of inspectors here in this book, isn't it?—A. It is the identical signature.

Q. B. O. Bush was an inspector at that election?—A. Yes, sir.

Q. He signed this certificate to this poll book as inspector, didn't he?—A. Yes, sir.

Q. W. E. Geary, James B. Chase, J. E. Walton also signed the certificate in this poll book as inspectors of that election?—A. Yes, sir.

Q. Now, referring to the tally-sheet book of this seventh precinct of this election, the tally-sheet book returned to your office by the board of inspectors, and especially to the different candidates for the office of Representative in Congress from the third congressional district, you testified on your direct examination that there were no tally marks on this book opposite the names of the various candidates for that office, didn't you?—A. Yes, sir; I think I did.

Q. Now look at the book; you find that to be so, don't you?—A. Yes, sir.

Q. The total number of straight votes are recorded in this tally-sheet book opposite the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley?—A. Yes, sir.

Q. Also the total number of split votes opposite each candidate which was received, as shown by the book?—A. Yes, sir.

Q. Also the total votes received by each one of those candidates?—A. Yes, sir.

Q. They are there in ink?—A. Yes, sir.

Q. Now refer to the statement book returned by the board of inspectors of the seventh precinct of that election to you as county clerk. John M. C. Smith, as shown by the tally-sheet book, had 157 votes, didn't he?—A. Yes, sir.

Q. As shown by the statement book there, there is given him, opposite his name, 157 votes?

Mr. MAYNARD. I will make this objection, that the statement book can in no way bolster up the tally-sheet book; that tally-sheet book shows so many straight votes and so many split votes and total so many, and there is no indi-

cation on the book to show where they derived them from. It is incompetent and immaterial.

Mr. ADAMS. We claim there is no error; they are not obliged to put down any tallies at all of any split or straight votes; they can keep the tallies on anything they want to. The tally sheet does not have to show the figures from which the result is obtained, if it shows the result.

Q. Opposite the name of Claude S. Carney in this statement book—tally-sheet book—the total votes received by him are recorded as 196?—A. Yes, sir; in that precinct.

Q. In the statement book in that precinct the total number of votes received for Claude S. Carney was 196?—A. Yes, sir; 196.

Q. There has been no changes, erasures, or corrections made in those figures in either of those books?—A. No, sir.

Q. The next is the ninth precinct?—A. Here it is.

Q. The tally-sheet book I call your attention to, returned by the election board of this election to your office, I understood you to say on your direct examination that you found a change in the figures opposite the name of Claude S. Carney. Didn't you so testify?—A. I think I did.

Q. Now, under the heading "Total split votes," opposite the name of Claude S. Carney appear now the figures 99?—A. Now; yes, sir.

Q. The first 9 of the 99 has not been changed at all, has it?—A. No, sir.

Q. There is indication there that under the second figure 9 there was originally an 8; is that correct?—A. I don't know what it was.

Q. Does it not so appear now?—A. Yes; I think probably it was an 8.

Q. But the 9 that is over the 8 is very plainly now a 9?—A. Yes, sir.

Q. Now, under the heading "Total votes received," opposite the name of Claude S. Carney in this book appears now to be the figures 175?—A. Yes, sir.

Q. In ink?—A. Yes, sir.

Q. Very plainly?—A. Yes, sir.

Q. And the figures opposite the different candidates for the office of Representative in Congress on that book are in ink?—A. Yes, sir.

Q. They are plain and legible, good figures, are they not?—A. Yes, sir; they are good figures.

Q. Now, that book is in the same condition now that it was when it was received by you from that election board?—A. Yes, sir; for all I know.

Q. Whatever change was made in these figures opposite the name of Claude S. Carney were made by the board of inspectors before a return of that book was made to your office by that board?—A. I believe that it was.

Q. Do you know who the change was made by?—A. I do not.

Q. Now, referring to the statement book returned to your office from that same precinct by the election board of that election, opposite the name of Claude S. Carney you find written in there in writing 170, then next appears the word "four," does it not?—A. Yes, sir.

Q. There is a line drawn through that four?—A. Yes, sir.

Q. And following that word "four" with a line through it is the word "five"?—A. Yes, sir.

Q. And the figures opposite the name of Claude S. Carney, opposite the writing there "one hundred and seventy-five," are now the figures 175?—A. Yes, sir.

Q. The five is very plain?—A. Yes, sir.

Q. And the change in the word "four" there and the change from four to five seem to have been made with the same ink and evidently by the same penman?—A. I think so; yes, sir.

Q. The 175 opposite the name of Claude S. Carney in this statement book corresponds to the total vote that Claude S. Carney received as recorded in the tally sheet book from that same precinct of that same election?—A. Yes, sir.

Q. And the words written here, 175 opposite the name Claude S. Carney, is in blue ink as well as the figures 175, are they not?—A. Yes, sir.

Q. You find in the poll book returned to you by the board of election from that precinct of that election a great many of the names in that poll book written with blue ink?—A. Yes, sir; most of them.

Q. Those three books are now in the same condition as they were when they first came into your office?—A. I believe they are; as far as I know, they are.

Q. Now, let us see the poll book. Refer now to the poll book returned to you as county clerk of that election in question in this controversy by the election board of the tenth precinct of the city of Kalamazoo; the first oath of inspector in that book is signed by Albert Ten Busschen?—A. Yes, sir.

Q. Under the jurat under his oath of Mr. Ten Busschen is the name of Clarence L. Miller, city clerk?—A. Yes, sir; C. L. Miller.

Q. Under the oath of Frank B. Godfrey, as inspector, and under the oath of A. T. Wells, as inspector, and under the oath of Paul Schrier, as inspector, and under the oath of D. E. Swartz, as clerk, and under the oath of Conrad Krelling, as clerk, and under the oath of William H. Truman, as clerk, and under the oath of Jake Millard, as gate keeper—that is, under the jurat of each one of those oaths except that signed by Albert Ten Busschen appear the name of Albert Ten Busschen?—A. Yes, sir.

Q. Without any designation of what officer he was?—A. Yes, sir.

Q. That the name Albert Ten Busschen appears under those various jurats to which your attention is called is one and the same signature, Albert Ten Busschen, that appears in the oath signed by Albert Ten Busschen?—A. Yes, sir.

Q. The same signature?—A. Yes, sir.

Q. Albert Ten Busschen was an inspector at that election?—A. Yes, sir.

Q. According to this record?—A. Yes, sir.

Q. He was an alderman of the city of Kalamazoo from the fourth ward in which that tenth precinct was at the time of this November 5, 1912, election was held?—A. Yes, sir.

Q. And the names Albert Ten Busschen, Paul Schrier, Peter Swartz, Frank B. Godfrey, A. T. Wells appear in the certificate at the end of this poll book as inspectors of that election, don't they?—A. Yes, sir; they do.

Q. I call your attention to the tally-sheet book returned by the board of inspectors from the tenth precinct of the city of Kalamazoo of this election in question, especially referring in that book to the different candidates for the office of Representative in Congress for the third congressional district. You testified on your direct examination that there were no tally marks in that tally-sheet book opposite the names of the different candidates for Congress?—A. Yes, sir; I think I did.

Q. That is correct?—A. Yes, sir.

Q. Under the heading "Total straight votes," and under the headings "Total split votes" and "Total votes received," opposite the names John M. C. Smith and Claude S. Carney, Levant L. Rogers and Edward N. Dingley, respectively, appeared figures in ink?—A. Yes, sir.

Q. There are no changes, erasures, or corrections made in those figures in that book?—A. No, sir.

Q. As shown by the book?—A. No, sir.

Q. They are plain, legible figures, are they not?—A. Yes, sir.

Q. Now refer to the statement book returned to your office by that same board from that same election precinct of that same election, and you find under the heading "Total votes received" in that tally-sheet book opposite the name of John M. C. Smith, 115 votes recorded?—A. Yes, sir.

Q. Opposite the name of John M. C. Smith, Representative in Congress, in the statement book you find 115 votes recorded?—A. Yes, sir.

Mr. MAYNARD. I object to that as incompetent and immaterial.

Q. Opposite the name Claude S. Carney, in the tally-sheet book, you find in ink "Total votes received" 139?—A. Yes, sir.

Q. Opposite the name Claude S. Carney, in this statement book, you find total votes received, 139?—A. Yes, sir.

Q. Now referring to the statement book returned to your office by the election board of this election in question from the eleventh precinct of the city of Kalamazoo, I understood you to testify this morning that there was a change made in the vote of Claude S. Carney for Representative in Congress, third district?—A. I think I did, or a correction, rather, made.

Q. Now, whatever occurs there opposite the name Claude S. Carney was made in that book before it reached your office from that election board?—A. Yes, sir; I believe so.

Q. As it appears on that book after the name Claude S. Carney there were originally written in there the words "seventy-one"?—A. I think so.

Q. There appears now to be a line or two drawn over those words "seventy-one"?—A. Yes, sir.

Q. Right after those words "seventy-one" with a line drawn through is the word "eighty," is that correct?—A. That is double d-d-y.

Q. Opposite that word "eighty," opposite the name Claude S. Carney, in figures appear in figures 80?—A. Yes, sir.

Q. The figures 80 appear to have been something else before the 80 was put down there?—A. I think so.

Q. Just above the names of the different candidates for Representative in Congress from the third district appears this: "Whole number of votes given for the office of Representative in Congress, third district" (then in writing) "three hundred and forty-six;" is that correct?—A. Yes, sir; that is correct.

Q. Then after those words in writing, over in the column for figures, the figures 346?—A. Yes, sir.

Q. There has been no change in the words "three hundred and forty-six?"—A. No, sir.

Q. No corrections made, as shown by this book?—A. No, sir.

Q. No correction made in the figures 346?—A. Yes, sir.

Q. Now, add up the votes received by John M. C. Smith, as shown by this book to which your attention has been directed, and the votes opposite the name Claude S. Carney and the votes opposite the name Levant L. Rogers and opposite the name Edward N. Dingley and they amount to 346, don't they?—A. Yes, sir; they do.

Q. Now refer to the tally-sheet book returned to your office from the eleventh precinct of the city of Kalamazoo by the election board of that election in question, opposite the name John M. C. Smith, Representative in Congress, and you find in the column "Total votes received" 63, don't you?—A. Yes, sir.

Q. That corresponds with the number of votes opposite the name John M. C. Smith in the statement book?—A. Yes, sir.

Q. Opposite the name Claude S. Carney, under the heading "Total votes received," you find 80 in figures?—A. Yes, sir.

Q. Those figures in this tally-sheet book opposite the name Claude S. Carney, namely, the figures 80 in the tally-sheet book, have been changed or corrected, have they?—A. No, sir.

Q. They appear unchanged in the tally-sheet book?—A. Yes, sir.

Q. Opposite Carney's name?—A. Yes, sir.

Q. That 80 votes for Claude S. Carney for Representative in Congress are recorded in this statement book opposite the name Claude S. Carney?—A. Yes, sir.

Q. Now refer to the poll book returned to your office by the election board of the eleventh precinct of this election in question; the first oath in this poll book of inspectors seems to be signed by Lawrence Hollander?—A. Yes, sir.

Q. The jurat is signed Clarence L. Miller, city clerk?—A. Yes, sir.

Q. Now, the oaths of inspectors—the next oath of inspector—as shown by this poll book and the oaths of the three clerks and the oaths of the two gatekeepers, the jurats under all the oaths of the different inspectors, clerks, and gatekeepers of that election board signed by Lawrence Hollander are without any official designation?—A. Yes, sir.

Q. The name Lawrence Hollander in these various jurats, aside from the one under Lawrence Hollander's oath, is the same signature as that of Lawrence Hollander under the oath signed by Lawrence Hollander?—A. Yes, sir; the very same.

Q. The final certificate on this poll book is signed by Lawrence Hollander and three other inspectors, isn't it?—A. Yes, sir.

Q. The names signed there to that final certificate of inspectors are the same inspectors, respectively, who signed these different oaths to which your attention has been directed?—A. Yes, sir.

Q. Now, then, come to the twelfth. Refer to the poll book returned to your office by the election board of the twelfth precinct of the city of Kalamazoo in this election in question, the first oath of inspector of election is signed by B. F. Van Blarcom?—A. Yes, sir.

Q. And the jurat signed by Clarence L. Miller, city clerk?—A. Yes, sir.

Q. Then the three inspectors, three clerks, and two gatekeepers signed the respective oaths to the respective positions they were filling there at that time?—A. Yes, sir.

Q. The jurats to those oaths were signed by B. F. Van Blarcom?—A. Yes, sir.

Q. Under the name B. F. Van Blarcom, under these different jurats, except to the jurat under one oath signed by him, are signed with the very same signature, B. F. Van Blarcom, as the name B. F. Van Blarcom which is signed under the oath signed by B. F. Van Blarcom?—A. Yes, sir.

Q. B. F. Van Blarcom was on November 5, 1912, an alderman in the city of Kalamazoo?—A. Yes, sir; of the fifth ward.

Q. Now, the thirteenth?—A. The thirteenth; here it is.

Q. Now, the ballot box from the thirteenth precinct of the city of Kalamazoo of that November 5, 1912, election; was that ballot box, among others, opened by the board of county canvassers?—A. Yes, sir.

Q. I understood you to say this morning that in the examination that you made here of the envelopes containing the returns by that board to the judge of probate that there was no statement book contained?—A. I think that is a fact.

Q. The envelope containing the returns to the judge of probate by that election board from that precinct is open now?—A. Yes, sir.

Q. And was open at the time the board of county canvassers met?—A. Yes, sir.

Q. At the time the board of county canvassers recounted the votes from that precinct?—A. Yes, sir.

Q. It is possible, is it not, that in putting the ballots back in the ballot box, when the ballots from that precinct were counted by the board of county canvassers, that that statement book may have been by mistake put in the ballot box?—A. It is possible; yes, sir.

Q. You don't know whether it is in there or not?—A. No, sir; I do not.

Q. You stated this morning that there were no tally marks on the tally-sheet book from the thirteenth precinct opposite the names of the different candidates for Representative in Congress, third district?—A. I presume I did.

Q. That is correct; you will look at the book now?—A. Yes, sir; that is correct.

Q. Now, take the total straight votes under the heading, "Total straight votes" and under the heading "Total split votes," opposite the names of John M. C. Smith, Claude S. Carney, Levant L. Rogers, and Edward N. Dingley; there are in each one of those columns some figures, are there not?—A. Yes, sir.

Q. Now, refer to this tally-sheet book opposite the name John M. C. Smith; under the head "Total straight votes" are the figures 58?—A. Yes, sir.

Q. Opposite his name, under the heading "Total split votes," are the figures 102?—A. One hundred and two.

Q. Opposite his name, under the heading "Total votes received," are the figures 160?—A. Yes, sir.

Q. Opposite the name Claude S. Carney, under the heading "Total straight votes," are the figures 133?—A. Yes, sir.

Q. Opposite the name Claude S. Carney, under the heading "Total split votes," are the figures 117?—A. Yes, sir.

Q. Opposite the name Claude S. Carney, under the heading "Total votes received," are the figures 250?—A. Yes, sir.

Q. In each particular they are in ink?—A. Yes, sir.

Q. Are there any changes, corrections, interlineations, or anything else?—A. No, sir.

Q. Refer to the statement book returned to your office by the election board of the thirteenth precinct of that election in question; you testified this morning that in the votes for the different candidates for Congress there had been a change made, you stated that as you read it. It reads this way: "Whole number of votes given for the office for Representative in Congress, third district, was 700; then follows the words "one hundred" with the words "seventy-four," didn't you, and that a line was drawn through the two words "seventy-four"?—A. There is a line drawn through. I don't know whether I called that 74 or 75—it would be hard to say. I think I thought it was 75; that looks as near like a 4 as a 5.

Q. Anyway, through the words, whether "seventy-four" or "seventy-five," a line is drawn through those two words?—A. Yes, sir.

Q. Just over those written in ink, now, is "fifty-four," in words?—A. Yes, sir; 754.

Q. Then carried out to the right of the words "seven hundred and fifty-four" are the figures 754?—A. Yes, sir.

Q. Those figures, 754, have not been changed in any way?—A. No, sir.

Q. Now, opposite the name John M. C. Smith, appear in figures 160, which haven't been changed in any way; is that correct?—A. Yes, sir.

Q. Opposite the name Claude S. Carney appear the figures 250; have those figures been changed in any way?—A. No, sir; that is correct.

Q. Opposite the name Levant L. Rogers appear the figures 136?—A. Yes, sir.

Q. There are no figures opposite the name of Edward N. Dingley?—A. No, sir; not opposite.

Q. But on the next line below the name of Edward N. Dingley, no name being on the same line, appear the figures 208?—A. Yes, sir.

Q. Now add up the 208, 136, 250, and 160 and they make 754?—A. Yes, sir.

Q. Now, this statement book and those figures in writing there, under the heading "Representative in Congress, third district," are just as they were when they came into your office from that election board, are they not?—A. I think they are; yes, sir.

Q. Now refer to the tally sheet book returned to your office from the election board of this thirteenth precinct of the city of Kalamazoo of this election in question. I direct your attention to that part of this book which relates to the office of Representative in Congress, third district, and opposite the name John M. C. Smith, under the heading "Total votes received," you find the figures 160, don't you?—A. Yes, sir.

Q. Those figures are just as they were put in there in the first instance?—A. Yes, sir.

Q. There have not been any changes or erasures of any kind?—A. No, sir.

Q. That is the tally sheet book I call your attention to?—A. Yes, sir.

Q. Opposite the name Claude S. Carney on this tally sheet book, under the heading "Total votes received," you find the figures 250?—A. Yes, sir.

Q. Those figures 250 are just as they were originally put in this book?—A. Yes, sir.

Q. Haven't been changed in any particular?—A. No, sir.

Q. No corrections made?—A. No, sir.

Q. Opposite the name Levant L. Rogers, "Total votes received," are 136, in figures?—A. Yes, sir.

Q. Those figures are just as they were originally put on there?—A. Yes, sir.

Q. Opposite the name Edward N. Dingley you find the figures under "Total votes received," 208?—A. Not exactly opposite—the 208 are one line above; it is meant, however, for Dingley.

Q. It is not on the same line Dingley's name is, but on a vacant line which is just above his name?—A. Yes, sir.

Q. In the column, "Total votes received"?—A. Yes, sir.

Q. Which is just under the figures 136, that are opposite the name Levant L. Rogers?—A. Yes, sir.

Q. In the column "Total votes received"?—A. Yes, sir.

Q. There is no question in your mind but the 208 are meant to be for Edward N. Dingley?—A. No, sir; not the slightest.

Q. None of those figures I have just read to you from this tally-sheet book appear to have been changed, altered, or corrected in any particular?—A. No, sir.

Q. They correspond with the figures that are opposite the corresponding names on the statement book, don't they?—A. Yes, sir; exactly.

Q. I call your attention to the poll book returned to your office by the election board of the thirteenth precinct of the city of Kalamazoo relating to this election in question, and call your attention to the first oath in this poll book which is signed by Ernest Wise?—A. Yes, sir.

Q. The jurat under that oath is signed by Clarence L. Miller, city clerk?—A. Yes, sir.

Q. There are three other oaths of inspectors signed, are there not, in that book by the inspectors?—A. Yes, sir; three others besides the first one.

Q. There are four oaths that are signed by different persons as clerks?—A. Yes, sir.

Q. Two oaths signed by two different men as gatekeepers?—A. Yes, sir.

Q. Each of the jurats under those oaths, except the first one, are signed by Ernest Wise?—A. Yes, sir.

Q. Without any designation of his official capacity or office?—A. Yes, sir.

Q. The name Ernest Wise in these different jurats appear in this book is the same signature as that of Ernest Wise in the first oath of inspector, isn't it?—A. Yes, sir; the same signature.

Q. Ernest Wise was an inspector of that election?—A. Yes, sir.

Q. In the final certificate in this same poll book Ernest Wise signed as one of the board of inspectors, didn't he?—A. Yes, sir.

Q. Together with three others?—A. Yes, sir.

Q. The next is the fourteenth. You testified this morning, as I understood you, that there was only one certificate made as far as the statement book was concerned, by the board of inspectors of the fourteenth precinct of the city of Kalamazoo at this November 5, 1912, election, now, you don't know, do you.

but what that board may have made a certificate in the statement book, nor do you know whether there is or is not a statement book contained in the envelope addressed to the judge of probate, containing some of the return of that board—election board—of the fourteenth precinct of the city of Kalamazoo, do you?—A. No, sir; I do not; I think I testified this morning that there was a certificate signed by H. A. Davis, one of the inspectors of election.

Q. You testified this morning, if I understood you correctly, that this was the only certificate made? I show you an envelope addressed to the probate judge containing a statement of the votes from the fourteenth precinct, fifth ward. You don't know what is in that envelope, do you?—A. No, sir; I do not.

Q. It is sealed?—A. No, sir; it is sealed.

Q. The seal is unbroken this very minute, isn't it?—A. Yes, sir.

Q. You don't know what certificate there may be or what different return there is in that envelope?—A. No, sir; I do not.

Q. The next is Texas Township. Now, I understood you to testify this morning that no returns had been made by the election board which acted November 5, 1912, in conducting the general election in the township of Texas, to the judge of probate, did you so testify?—A. I don't know whether I did or not.

Q. I show you an envelope now addressed to the probate judge or the board of county canvassers, Kalamazoo, Mich., and is file-marked "Kalamazoo County, probate court, filed November 6, 1912, Richard H. Elwell, register of probate." On the left-hand corner appears this: "This envelope contains one statement of votes of the township of Texas, at the election held November 5, 1912." That was correctly read by me, was it not?—A. Yes, sir.

Q. That envelope is sealed?—A. Yes, sir.

Q. At this time the seal is unbroken?—A. Yes, sir.

Q. It appears to have something inside of it, does it not?—A. Yes, sir. I recollect during that canvass there was some question about their being short a return in the judge of probate's office; whether they found it afterwards or not I don't know. We went through all these here this morning, and I didn't find it here, and at that time I believed there was not.

Q. All these returns that have been produced here on this hearing have been produced by you, have they not, as county clerk?—A. Yes, sir.

Q. Since the meeting of the board of county canvassers held here shortly after the November 5, 1912, election, there has been in your possession, custody, and control, as county clerk, all of the returns that were received by the judge of probate from the several boards in the county of Kalamazoo of that November 5, 1912, election?—A. I think they have; yes, sir.

Q. Now, you received from the judge of probate, as county clerk and as clerk of the board of county canvassers, shortly after that November 5, 1912, election the returns from the election board in every township and every voting precinct in the city of Kalamazoo and elsewhere in the county of Kalamazoo of that November 5, 1912, general election, didn't you?—A. I think those were ordered by the board of county canvassers as they needed them, and Richard H. Elwell brought them in as they called for them, and when they were through they were left in the office.

Q. The board had them there before them, or you had the custody of them as clerk of the board?—A. Yes, sir.

Q. The returns of the board of county canvassers—I mean the returns from every township and every voting precinct that existed in the county of Kalamazoo at the time of that November 5, 1912, election?—A. I think I did; I had the custody of what returns are here.

Q. I show you a statement book of the general election held November 5, 1912, in the township of Texas, county of Kalamazoo. You testified this morning that whatever was filled in the book was filled in with a lead pencil, didn't you?—A. I think I did.

Q. It is so filled in with a lead pencil now, isn't it, as you observe after examining it?—A. Yes, sir; I think it is.

Q. I call your attention to what is contained in this statement book under the heading "Office of Representative in Congress, third district"; you find there the name John M. C. Smith, don't you?—A. Yes, sir.

Q. Opposite the name John M. C. Smith you find written in in lead pencil the words "fifty-five"?—A. Yes, sir.

Q. Then further to the right, opposite the name John M. C. Smith, in the column headed "Put figures in this column," you find the figures "55"?—A. Yes, sir.

Q. Now, then, I call your attention to the tally-sheet book from this same township of Texas, this same election, one of the books you have brought here as returned by the election board of that township, and I especially call your attention to what appears in this tally-sheet book opposite the heading "Representative in Congress, third district," you notice there the name of John M. C. Smith, don't you?—A. Yes, sir.

Q. You find some tallies there, don't you, in ink—tally marks in ink?—A. Yes, sir; I think that is ink.

Q. Opposite the name John M. C. Smith in this tally-sheet book, under the heading "Total straight votes," you find the figures 32 in ink, don't you?—A. Yes, sir.

Q. Opposite the name John M. C. Smith in this tally-sheet book, under the heading "Total split votes," you find the figures 23, don't you?—A. Yes, sir.

Q. In ink?—A. Yes, sir.

Q. Opposite the name John M. C. Smith, under the heading "Total votes received," you find the figures 55 in ink?—A. Yes, sir.

Q. Now, opposite the name Claude S. Carney, in the statement book from this township of Texas, you find in writing the words "sixty-six"?—A. Yes, sir.

Q. Opposite the name Claude S. Carney to the right of the words "sixty-six" in the column "Put figures in this column" you find the figures 66?—A. Yes, sir.

Q. Referring to the tally-sheet book from this same township, opposite the name Claude S. Carney, you find some tally marks, don't you?—A. Yes, sir.

Q. Then, still further to the right, under the head "Total split votes," you find opposite the name Claude S. Carney the figures 52?—A. Yes, sir.

Q. In ink?—A. Yes, sir.

Q. Opposite the name Claude S. Carney in the column "Total split votes" you find the figures in ink 14?—A. Yes, sir.

Q. Opposite the name Claude S. Carney, under the heading "Total votes received," you find the figures 66 in ink?—A. Yes, sir.

Q. Now, then, the figures opposite "Total votes received" opposite the name Claude S. Carney and John M. C. Smith in this tally sheet from the township of Texas you find to be identical with the figures that are respectively opposite the names of Claude S. Carney and John M. C. Smith in lead pencil in that statement book in this township of Texas, don't you?—A. Yes, sir.

Q. I show you the poll book of the township of Texas returned to you of that November 5, 1912, election by the election board of that township. Now, I understood you to say this morning that the oaths were filled out in so far as the blank spaces were concerned by using a lead pencil?—A. I think I was mistaken in that; there was one gatekeeper that is filled out in ink, when I come to examine it.

Q. You find upon examination that the oath of gatekeeper was signed by Richard Jeffreys in ink?—A. I think it is.

Q. As far as the jurats are concerned that is signed there with a blue indelible pencil, is it not?—A. I don't know whether indelible, it is a blue pencil.

Q. Look at it and see?—A. I don't know whether it is indelible or not; it looks more like one of these big, blue, soft lead pencils.

Q. Did you furnish supplies to these townships as county clerk?—A. Yes, sir.

Q. You furnished these election boards, didn't you, for the November 5, 1912, election with pencils with blue lead in them?—A. Yes, sir.

Q. It was intended as an indelible pencil wasn't it?—A. I don't know whether it is or not.

Q. Is it not a fact that these signatures to these jurats are what is commonly called indelible—blue indelible pencil?—A. I don't know; they may be; I don't know.

Q. That blue-pencil mark is very difficult to mark out or erase it is not as compared with an ordinary lead pencil?—A. I don't think it is very hard to erase.

Q. Well, you didn't notice, did you, in this lead-pencil writing, in blue writing, or in black lead-pencil writing that there has been any erasures or corrections in any of these oaths?—A. No, sir; I can't see that there has.

Q. From the appearance of the book at this moment it is unchanged, as far the oaths are concerned, from what it was when it came into your possession from the board of that township?—A. I think it is.

Q. Brady is the next one, first precinct. Now, I understood you to say that the board of county canvassers did not make their canvass from any returns that were sent by the election board from the first precinct of Brady Township,

Kalamazoo County, to the judge of probate this morning on your direct examination; is that correct?—A. I don't know whether it is or not. I think I depended upon whether the returns to the judge of probate had been opened or not.

Q. Examine the returns.—A. If it has not been opened, they didn't make their returns from that. These returns seem to be sealed up; never have been opened.

Q. The board of county canvassers did make and determine the vote and make their canvass from the returns made by the election board of the first precinct of Brady Township, as sent to you as county clerk, of the November 5, 1912, general election, didn't they?—A. I think they did.

Q. You know they did, don't you?—A. Yes, sir.

Q. As clerk of that board you know that to be a fact?—A. Yes, sir.

Q. These returns you have produced here?—A. Yes, sir.

Q. That were sent to you from that precinct, haven't you?—A. Yes, sir.

Q. They are here before you now?—A. Yes, sir.

Q. Now, let's see, that second precinct, refer to the statement book returned to your office by the election board of the second precinct of the township of Brady of the general election held November 5, 1912, certifying that the statement book is signed by W. J. Yates, W. H. Beebe, A. W. Parker, inspectors of election, isn't it?—A. Yes, sir.

Q. Ross Township. I show you the statement book, filed in your office by the election board of the township of Ross, of the general election held on November 5, 1912. The certificate to that statement book is signed by D. J. Bailey, W. J. Becraft, and Fred G. Walkenshaw, inspectors of election?—A. Yes, sir.

Q. By the poll book returned by that board of election to you as county clerk Mr. Bailey was sworn as inspector of that election?—A. Yes, sir.

Q. And W. J. Becraft was?—A. Yes, sir.

Q. Fred G. Walkenshaw, as appears by that poll book, was sworn as an inspector of election?—A. Yes, sir.

Q. The board of county canvassers footed the vote of that November 5, 1912, election from what returns?—A. From the returns made to the county clerk's office.

Q. Wakeshma now. I call your attention to the poll book of the general election held November 5, 1912, returned to your office by the election board of the township of Wakeshma, Kalamazoo County, and I wish you would read the first certificate you find in that book, just as it is there.—A. (Reading:)

“ OATH OF INSPECTOR OF ELECTION.

“ STATE OF MICHIGAN,

“ *County of Kalamazoo, ss:*

“ I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of election, held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability. So help me God.

“ANDREW BERGE.

“ Subscribed and sworn to before me, this 5th day of November, A. D. 1912.

“ O. L. CRAMER, *Township Clerk.*”

Q. Counsel did not have you read that this morning when he called your attention to this poll book. That is correct, as you remember it?—A. I don't remember whether I did or not.

Q. Your attention was called to the next certificate?—A. Yes, sir; I remember that.

Q. Following this of Andrew Berge, you find the oath of A. R. Masgrove as inspector, don't you?—A. Yes, sir.

Q. After Masgrove's oath you find that of Elias Frost?—A. Yes, sir.

Q. Masgrove's jurat under his oath is signed by Otis Cramer, and the jurat under Elias Frost's oath is signed by Otis Cramer, without any official designation as to those two jurats of the official authority of the officer?—A. Yes, sir; that is correct.

Q. The signature of Otis Cramer to the oath of A. R. Masgrove and under the oath of Elias Frost is the very same signature that you find in the jurat under the oath of Andrew Berge?—A. Yes, sir.

Q. Under the jurat to the oaths signed by Charles E. Sweet and J. R. Mears, as gatekeepers, you also find upon the two jurats to those oaths the name of Otis Cramer, without any official designation of his authority?—A. Yes, sir.

Q. That name Otis Cramer under those two jurats is the same signature that you find under the name to the oath to Andrew Berge?—A. Yes, sir.

Q. Otis Cramer, therefore, appears by that first jurat to have been township clerk of that township?—A. Yes, sir.

Q. Well, just refer to the canvass book. Now, what is first down there—refer to the book you referred to this morning that contains the canvass made by the board of county canvassers of the vote cast in that township and precinct, county of Kalamazoo, at the November 5, 1912, general election—what is that?—A. That is Alamo.

Q. We have got that. Now read from your record of the township of Climax the number of votes for John M. C. Smith. How many votes are shown by that canvass for John M. C. Smith?—A. For John M. C. Smith 83, and 82 for Claude S. Carney.

Q. Comstock, first precinct—read the vote for John M. C. Smith from the first precinct.—A. For John M. C. Smith 101, and 67 for Claude S. Carney.

Q. Oshtemo—how many votes are shown by the canvass for John M. C. Smith in the township of Oshtemo?—A. Ninety-two.

Q. How many for Claude S. Carney?—A. Sixty-three.

Q. How many votes are shown by the canvass for John M. C. Smith in the township of Pavillon?—A. One hundred and thirteen.

Q. How many for Claude S. Carney?—A. Seventy-four.

Q. How many votes are shown by the canvass for John M. C. Smith in the township of Portage?—A. Seventy-four.

Q. How many for Claude S. Carney?—A. Fifty-seven.

Q. How many votes are shown by the canvass for John M. C. Smith in Prairie Ronde?—A. Eighty-one.

Q. How many for Claude S. Carney?—A. Sixty-one.

Q. How many votes are shown by the canvass for John M. C. Smith in the township of Richland?—A. Eighty-two.

Q. How many for Claude S. Carney?—A. Eighty-one.

Q. How many votes are shown for John M. C. Smith in the second precinct of Schoolcraft Township?—A. One hundred and thirty-three.

Q. How many for Claude S. Carney in the second precinct of Schoolcraft?—A. Ninety-five.

Q. How many votes are shown for John M. C. Smith in the fifth precinct of the city of Kalamazoo?—A. One hundred and seventy.

Q. How many for Claude S. Carney in the fifth precinct of the city of Kalamazoo?—A. One hundred and forty-eight.

Q. How many votes are shown for John M. C. Smith in the eighth precinct of the city of Kalamazoo?—A. One hundred and fifty-seven.

Q. How many are shown for Claude S. Carney as determined by the board of county canvassers in the eighth precinct of the city of Kalamazoo?—A. One hundred and forty-seven.

Q. What was the total vote as determined by the board of county canvassers for John M. C. Smith for Representative in Congress from all the precincts and townships in the county of Kalamazoo?—A. Three thousand two hundred and eighty-eight.

Q. What was the total vote as determined by the board of county canvassers from all the townships and voting precincts in Kalamazoo County for Claude S. Carney?—A. Three thousand seven hundred and ninety-six.

Redirect examination by Mr. MAYNARD:

Q. I want to inquire with reference to the township of Texas, and I want to call your attention; when I called your attention to it this morning, I asked you if the township made a return to the board of county canvassers, and in looking over your papers here you were unable to find it. I ask you if since that you have found those returns?—A. Yes, sir.

Q. Are they here intact, sealed, and unbroken?—A. Yes, sir.

Q. Now, are you able to state whether or not the board of county canvassers determined the vote upon the office of Congressman from the township of Texas for the general election held in that township on the 5th day of November, 1912, from the returns which were sent to the county clerk's office?—A. Yes, sir.

Q. Without examining or attempting to examine the returns sent to that board from that township, sent to the board of county canvassers from that township in care of the judge of probate?—A. Yes, sir; they did.

RICHARD H. ELWELL, being duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. Where do you reside?—A. City of Kalamazoo.

Q. How long have you lived here?—A. About 10 years.

Q. Do you hold any official position in the county?—A. I do.

Q. What is it?—A. Register of the probate court.

Q. How long have you been register of the probate court?—A. Seven years the 1st of August.

Q. You were register of the probate court of this county on the 5th day of November last, following the election?—A. Yes, sir.

Q. Do you recollect of the returns coming from the various townships and precincts in this county to the probate judge for the board of county canvassers?—A. Yes, sir; I do.

Q. I will ask you to state whether upon some of those the seals were broken when they arrived?—A. They were.

Q. Is that an uncommon thing?—A. No, sir; we find that very often.

Q. Did you get any through the mail?—A. Yes, sir.

Q. You are not able to state which ones?—A. No, sir.

Q. The returns sent to the board of county canvassers have been in the clerk's office?—A. I think so; I have not seen them since then.

Cross-examination by Mr. ADAMS:

Q. How many envelopes had the seals broken in the returns to your office?—

A. I couldn't state positively; there were two of them that were broken, both seals broken. There were some that one seal was broken and the other was still intact.

Q. Two townships or precincts had all the seals broken? What townships were those?—A. I couldn't state; I paid no attention to it, because it is a very common thing for them to come in with the seals broken.

Q. When they came in there you put them, I suppose, all in your vault?—A. Yes, sir.

Q. And keep them just as they are returned to you until they are delivered to the board of county canvassers?—A. Yes, sir.

Q. No changes were made in any of the returns after they came into the register's office of probate up to the time they were delivered to the board of county canvassers?—A. No, sir.

Q. You had the returns from every township and precinct in the county of Kalamazoo of that November 5, 1912, general election, had you?—A. Yes, sir.

Q. You turned those over to whom?—A. I think Frank Walters, the deputy county clerk, came and got them.

Q. The deputy clerk under Mr. Curtenius, the county clerk?—A. Yes, sir.

Q. You turned over to him the returns from every election board, from every township and every precinct—election precinct—in the county of Kalamazoo of that November 5, 1912, general election, didn't you?—A. Yes, sir.

APRIL 14 AND 15, 1913.

Mr. FELLOWS. I will file with the commissioner notice of taking this testimony, together with the acceptance of service of the same.

FRANK FAST, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Fast, you live where?—A. In the township of Camden.

Q. Do you hold any official position in that township?—A. Yes, sir; justice of the peace.

Q. Were you a justice of the peace of that township on the 5th day of November, 1912?—A. Yes, sir.

Q. Did you sit on the board of election in that township on that day?—A. I did.

Q. Who else composed that board?—A. W. C. Kentelgh.

Q. What official position did he have in the township?—A. Supervisor.

Q. He was one of the inspectors?—A. He was one of the inspectors and W. M. Covey was the other.

Q. What position did he have in the township?—A. He was justice of the peace.

Q. You and Mr. Kenteigh and Mr. Covey were the inspectors?—A. Yes, sir.

Q. You had three inspectors?—A. Yes, sir.

Q. Who were the clerks?—A. Charles Fast and Mr. Hughey were clerks; my brother was assistant clerk; S. E. Hughey.

Q. Where was that election held?—A. In Baker's hall.

Q. Where was the voting done?—A. The voting was done in the east end of the hall.

Q. Was there a stage there?—A. No, sir.

Q. After the voting was over where were the votes canvassed?—A. The votes were canvassed in the west end of the hall.

Q. Was there a stage at that end?—A. Yes, sir.

Q. During the time the voting was being canvassed did people go in and out on the stage where the vote was being canvassed?—A. There were a few people on the stage.

Q. I mean others than the inspectors.—A. Others than the inspectors; yes, sir.

Q. Others than the inspectors of election?—A. Yes, sir.

Q. What time did you complete your canvass there?—A. Well, about 9 o'clock.

Q. Of the following morning?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. W. M. Covey administered the oaths to the inspectors and the clerks of that election, didn't he?—A. I don't remember; I don't think he did.

Q. Who do you think did?—A. I think Mr. Crane did, but I may be mistaken about that.

Q. Your best recollection is that Mr. Crane administered the oaths to the inspectors there that day?—A. Yes, sir.

Q. What Crane; what is his first name?—A. Harmon Crane.

Q. W. M. Covey was a justice of the peace at that time?—A. Yes, sir.

Q. In that township?—A. Yes, sir.

Q. You stated that the election was held in Baker's hall?—A. Yes, sir.

Q. And that the voting was done, as I understood you, in the east end of the hall?—A. Yes, sir.

Q. You stated that the votes were counted in the west end?—A. Yes, sir.

Q. All in one room?—A. All in one room.

Q. That is, where the people voted and the votes were deposited in the ballot box on that day was all in one and the same room where the votes were counted after the polls closed?—A. Yes, sir.

Q. There was a stage, you say, in the west end of the room?—A. Yes, sir.

Q. And the votes were counted on that stage?—A. Yes, sir.

Q. How high a stage was that?—A. Oh, about three feet and a half.

Q. About 3½ feet?—A. Yes, sir.

Q. About as high as the table here that the commissioner is writing on?—A. I should say higher than that; I would not wonder if it was close to 4 feet.

Q. There were steps so you could go up on it?—A. Yes, sir.

Q. There was nothing to prevent people from going up there and seeing the counting being made, was there?—A. No, sir; there was nothing to prevent that.

Q. I don't suppose very many people were in there when the count was being made, was there?—A. There were quite a good many people in the room down off the stage, and there were just a few that would look on and stand off when we were counting.

Q. They came up on the stage if they wanted to; you didn't keep them off the stage, did you?—A. No, sir.

Q. You didn't try to?—A. Well, we tried to in the start and, of course, could have kept them off if we had tried very hard I expect; we didn't make it a public place, but people could walk right up there, and there were several came up and stood around.

Q. Well, some of the public were up on the stage and saw the count being made?—A. Yes, sir.

Q. You completed the canvass about 9 o'clock on the 6th?—A. Yes, sir.

Q. You were a Republican at the time that election was held and the canvass made, were you?—A. Yes, sir; I was.

Redirect examination by Mr. FELLOWS:

Q. Where the voting was had in the hall—was that railed off?—A. The east end was railed off where the voting was done.

Q. Where the counting was done there was no railing?—A. No, sir.

Recross-examination by Mr. ADAMS:

Q. The voting was completed at the place and within the place that was railed off?—A. Yes, sir.

Q. No voting was done after 5 o'clock of the afternoon of the 5th?—A. No, sir.

Q. The polls closed at 5 o'clock?—A. Yes, sir.

Q. Is that correct?—A. Yes, sir.

Q. When they closed you were still continuing the election within the railing of that room?—A. Yes, sir.

HARMON C. CRANE, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee, as follows:

Direct examination by Mr. FELLOWS:

Q. Your home is in Camden?—A. Yes, sir.

Q. Did you live there at the time of the election—November 5, 1912?—A. Yes, sir.

Q. You recollect the election, do you?—A. Yes, sir.

Q. Where was it held?—A. It was held in Baker's hall.

Q. Where was the ballot box and the booths?—A. They were in the east end of the hall.

Q. Was that railed off from the rest of the hall?—A. Yes, sir.

Q. Do you know when they commenced the count?—A. Yes, sir.

Q. Where was the counting done?—A. It was done in the east end of the hall on the stage.

Q. Was that stage railed off?—A. No, sir.

Q. Were you in there more than once while the counting was in progress?—A. Yes, sir.

Q. At any of the times when you were in there was there anyone on the stage where the counting was in progress outside of the inspectors of election?—A. Yes, sir.

Q. How many times were you in there?—A. I was in there twice.

Q. On both occasions were there outsiders on the stage where this counting was going on?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. Mr. Crane, when were you in there after they began the count?—A. I think the first time was about 9 o'clock.

Q. At night?—A. Yes, sir.

Q. You were in there more than once that night?—A. I was.

Q. When were you next in there after the first time?—A. It must have been between 10 and 11 o'clock.

Q. Things were going along all right, were they not?—A. I didn't see anything to the contrary.

Q. You didn't see anything wrong with the way the election was being conducted?—A. No, sir; the election was being done regularly, I suppose, outside of the outsiders being there.

Q. The people didn't interfere any with it?—A. Not while I was there; no, sir.

Q. They didn't in any way interfere with the board in making the count?—A. No, sir.

Q. You didn't see anything that was being done there that occurred to you that it was not a fair election and count of the votes in that precinct, did you?—A. No, sir; as far as the count was concerned I didn't see anything out of the way.

Q. The counting was being done in the same room that the voting was done in?—A. Yes, sir.

Q. Or had been done on that day?—A. Yes, sir.

Q. You were a Republican, were you not, at the time of that election?—A. Yes, sir.

Q. Did you hold some official position there in Camden at that time?—A. I was postmaster.

Q. You are postmaster there yet?—A. Yes, sir.

FRANK FAST, recalled for further cross-examination, testified as follows:

By Mr. ADAMS:

Q. The reason you went up on the stage in that room to count the ballots was because it was warmer up there on the stage, was it not?—A. Yes, sir.

Q. It was very cold down where the voting had been done that day?—A. Well, it was not cold that day, but then it got cold during the night down there.

Q. About the time you got reading the count, at 5 o'clock, it was getting pretty chilly in that room?—A. Yes, sir.

Q. It was warmer up there on the stage?—A. Yes, sir.

Q. It was also lighter on the stage, was it not?—A. Yes, sir; we had a light nearer and directly over the ballots.

Q. You had a lamp there?—A. Gas lamp; yes, sir.

Q. By counting there you got your table directly under that light?—A. Yes, sir.

Q. While within the railing, down where the voting was done, you didn't have a light?—A. We would have a light, but it was higher up, nearer the ceiling, and didn't give quite as much light.

Q. Those were the reasons you went up on the stage?—A. Yes, sir.

MILES H. BLEECH, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee, as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Bleech, where do you reside?—A. In Jerome.

Q. That is in what township?—A. Sunset.

Q. That is the township in this county east of Moscow?—A. Yes, sir.

Q. Did you formerly live in Moscow?—A. Yes, sir.

Q. Did you live in Moscow on the 5th of November last?—A. Yes, sir.

Q. Do you remember the election?—A. Yes, sir.

Q. What official position did you have on the board of election that day?—

A. I was clerk.

Q. Who was the supervisor of that township?—A. Thomas Clyon.

Q. Did he sign a certificate as one of the inspectors of that board?—A. Yes, sir.

Q. Did anything occur with reference to his family that called him away?—

A. Yes, sir.

Q. What was it?—A. His mother was found dead about 11 o'clock and he left about that time.

Mr. ADAMS. Is there any allegation about that?

Mr. FELLOWS. I don't know.

Mr. ADAMS. I move to strike out the testimony for the reason that there is no allegation in the answer of any such a state of facts and as irrelevant to the issue and inadmissible; and therefore for the same reasons object to any testimony on the same subject that may come up from now on.

Q. What did Mr. Clyon do after he received that news?—A. He left at once.

Mr. ADAMS. May the same objection apply to all this?

Mr. FELLOWS. Yes; if it is not covered by the answer; we will ask to amend.

Q. What was done with reference to supplying his place on the board?—A. We employed Will Straight to take his place.

Q. Was William Straight a resident of that township?—A. Yes, sir.

Q. He was not elected by the voters to take the place?—A. No, sir.

Q. Just appointed by Mr. Clyon?—A. Yes, sir.

Q. Did Mr. Straight continue on that board during the balance of the day?—A. Yes, sir.

Q. Did Mr. Clyon come back before the count was completed?—A. I think he was back there, yes; he was back before the count was completed.

Q. Do you remember whether he came back before the polls closed?—A. He was back there, but he just came in to see how things were going and went out.

Q. After the polls closed it was some time before the count was completed, and he came back there and assisted in the count?—A. Yes, sir; he was back there and helped.

Q. Was Mr. Art Smith also an inspector?—A. Yes, sir.

Q. Did he assist in the count?—A. No, sir.

Q. Why not?—A. Well, I don't think he was able to.

Q. You mean by reason of his condition?—A. Yes, sir.

Q. Because of something he had been drinking?

Mr. ADAMS. I object to this line of examination of this witness as being extremely leading.

A. Well, I heard he had been drinking; I couldn't swear to it because I didn't see him drinking anything.

Mr. ADAMS. I move to strike out what he states he heard as hearsay.

Q. From his appearance would you say he had been drinking?—A. Yes, sir.

Mr. ADAMS. I move to strike out what the witness testified to about the appearance of Art Smith as incompetent.

Q. Did Art Smith return after he left to assist in the count?—A. No, sir; he didn't return.

Q. Was there anyone else who came in to assist in the count or attempt to assist in the count?—A. Not that I saw.

Q. You don't know then whether Fred Rice assisted in the count or not?—A. He didn't assist in anything I saw.

Q. Who did the actual counting?—A. Mr. Siegel did the actual tallying and Mr. Travis and William Straight read off the count.

Q. They read them and you and Mr. Siegel did the tallying?—A. Yes, sir.

Q. Did you see Fred Rice behind the railing that evening?—A. Yes, sir.

Q. Was he there very long?—A. I don't think he was.

Q. Do you remember at the noon adjournment what was done with the tally sheets?—A. They were placed in the ballot box.

Q. And that was sealed?—A. Yes, sir.

Q. Was it left in charge of someone or was the hall locked?—A. The hall was locked.

Q. No one left there?—A. No, sir.

Q. The ballot box was left in the hall?—A. Yes, sir; but it was sealed.

Cross-examination by Mr. ADAMS:

Q. I suppose that place where that election was held was locked up securely at noon?—A. Yes, sir.

Q. The entire board of inspectors, clerks, and gatekeepers went out, then the door was locked?—A. Yes, sir.

Q. Everything was locked up so nobody could get in there without breaking in?—A. Yes, sir.

Q. When you came back you found everything just as you left it?—A. Yes, sir.

Q. You found that nothing had been tampered with at all or in any way changed from what it was when you went out to the noon meal?—A. No, sir.

Q. That is correct, isn't it?—A. Yes, sir.

Q. You say that you saw a gentleman named Frank Rice in there?—A. Fred Rice.

Q. Who was Fred Rice?—A. He is a merchant there in Moscow, and a butcher and meat-market man.

Q. Well, you said you didn't see Fred Rice do anything there except standing there?—A. I did not.

Q. You were there?—A. Yes, sir.

Q. While the election was being held?—A. Yes, sir.

Q. And continued there?—A. Yes, sir.

Q. You were helping to perform the duties of a clerk of that election?—A. Yes, sir.

Q. Was there all day, were you, during the time the election was being held and the votes being cast?—A. Yes, sir.

Q. You were there during the time the count was being made up to the time the count was completed?—A. Yes, sir.

Q. Fred Rice did not take any part in the election?—A. No, sir.

Q. He didn't do anything that was out of the way, did he?—A. Not that I saw.

Q. You had your eyes open, looking around?—A. I did most of the time; yes, sir.

Q. What time did Art Smith leave?—A. About 7 o'clock.

Q. At night?—A. At night, about that time, I think; I couldn't say exactly.

Q. He stayed there then from the time the polls opened in that voting place in the morning at 7 o'clock?—A. Yes, sir.

Q. Until the polls closed at what time?—A. Five o'clock.

Q. And the vote had been completed?—A. Yes, sir.

Q. Before he left?—A. Yes, sir.

Q. And he stayed there about two hours after the vote had stopped?—A. About two hours.

Q. And then he left?—A. Yes, sir.

Q. Somebody else, you say, came in—a fellow named William Straight?—A. He came in about 11 o'clock to take the place of Supervisor Clyon.

Q. Who was William Straight?—A. He was one of the voters at Moscow township, a farmer.

Q. Straight was sworn in to act as inspector, wasn't he?—A. I suppose so.

Q. Don't you know that he was?—A. I couldn't say whether he was sworn in or not, but he was registered.

Q. I don't care about his being registered; but was he sworn in before he did anything in the conduct of that election. William Straight, was he sworn in to perform the duties of inspector of that election to the best of his ability, and to support the Constitution of the United States and the constitution of the State of Michigan?—A. Yes, sir.

Q. I call your attention now to the poll book of the general election of November 5, 1912, township of Moscow, county of Hillsdale, State of Michigan, and ask you to read what I am pointing to just now.—A. (Reading:)

“STATE OF MICHIGAN, *County of Hillsdale, ss:*

“I, William Straight, do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election according to the best of my ability.

“Taken, subscribed, and sworn to before me this 5th day of November, A. D. 191—.

“GEORGE R. TRAVIS,

Justice of the Peace, one of the inspectors of this election.”

Q. Then it is signed under the oath there, how?—A. By William Straight.

Q. Is he the man you say came in there and acted on that board about 11 o'clock that day?—A. Yes, sir.

Q. George R. Travis was one of the inspectors of that election board there that day, was he not, and was such inspector of that election board at the time that William Straight was sworn in as inspector?—A. Yes, sir.

Q. George R. Travis administered the oath to William Straight, and he had been acting on that election board from the time the board was organized in the morning of that election day, didn't he?—A. Yes, sir.

Q. William Straight was a Republican in politics?—A. He was a Democrat; he was registered as a Democrat.

Q. Well, all right.—A. I am not sure; I think he was.

Q. You say that William Straight was appointed to take his place?—A. Yes, sir.

Q. You were a Republican November 5, 1912?—A. I was registered as a Republican.

Q. Mr. Siegel, the other clerk, was a Republican?—A. I think he was registered as a Republican, but I am not sure; I think he is.

Mr. FELLOWS. What was Mr. Clyon's politics?

A. He was registered as a Democrat.

Q. What about Mr. Travis?—A. He was a Democrat.

LAFAYETTE SIEGEL, being first sworn to tell the truth, the whole truth, and nothing but the truth testified in behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. You live where?—A. In Moscow.

Q. Did you live in Moscow Township on the 5th day of November last?—A. Yes, sir.

Q. Do you recollect the election that occurred on that day?—A. Yes, sir.

Q. What, if any, connection did you have with the election in Moscow on that day?—A. I was clerk.

Q. Were you there from the time the polls opened until the count was completed?—A. Yes, sir.

Q. Who was supervisor of that township at that time?—A. Thomas Clyon.

Q. Was he obliged to leave some time during the day?—A. Yes, sir.

Q. State to the commissioner the circumstances under which he left?—A. Well, he got word that his mother had died; that was at noon he left.

Q. What did he do with reference to getting somebody to take his place?—A. He appointed William Straight.

Q. Was William Straight elected by the electors to take that place?—A. No, sir; I think not.

Q. Just appointed by the supervisor?—A. Just appointed by the supervisor; yes, sir.

Q. William Straight was sworn in?—A. Yes, sir.

Q. Did he continue to act during the rest of the time that the board of election was in session?—A. Yes, sir.

Q. Including the counting of the ballots?—A. Yes, sir.

Q. Was there an Art Smith on the board as one of the inspectors?—A. Yes, sir.

Q. Did he attempt to assist in the count?—A. He did; yes, sir.

Q. What happened to some of the ballots that were on the table that he was trying to count?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and inadmissible under the answer in this case; there is no allegation of anything of that kind.

A. Why, I don't understand what you mean.

Q. What I meant; when he was counting the ballots—handling the ballots—was he able to keep them all on the table in front of him or did they drop off?—A. He had some of them on the floor or the table was not large enough to hold them; I don't know which.

Q. But you know that some of them were on the floor?—A. Yes, sir; he had a stack on the floor.

Q. Did he continue to assist in the count until the count was closed?—A. No, sir; he did not.

Q. During the time that he was there did anyone else come in—any outsider come in and attempt to assist in the count?—A. Well, I don't know as they attempted to assist; outsiders came in.

Q. Are you acquainted with Fred Rice?—A. Yes, sir.

Q. What is his business?—A. He is the general-store man.

Q. Did he come inside of the railing that night when you were counting?—A. Yes, sir.

Q. Do you know whether he handled any of the ballots or not?—A. Yes, sir; he picked up one ballot.

Q. You saw that?—A. Yes, sir.

Q. You were keeping track of the check marks and was very busy?—A. Yes, sir.

Q. Did you see him handle any more ballots?—A. No, sir; I don't think I noticed him handling any more than one.

Q. How long did he remain in there?—A. Why, perhaps 15 minutes; it is hard to tell.

Q. As a matter of fact, who did the work of counting the votes there; who acted as clerks in checking up the vote?—A. Mr. Bleech and I.

Q. Who acted as inspectors in counting the ballots and reading off the names?—A. William Straight and George R. Travis.

Q. Did Mr. Clyon come back at any time at all to assist in the count?—A. Yes, sir; he came back in the evening.

Q. After he came back did he remain there continuously until the count was completed?—A. Yes, sir; I think so; he might have been out of there off and on different times, but he was there when we got through.

Q. Are you able to state whether he was there when you started in with the ballots?—A. I don't think so; I don't think he was.

Q. After Mr. Smith went away, did he come back and assist in the count again?—A. No, sir.

Cross-examination by Mr. ADAMS:

Q. You say that William Straight and George R. Travis read off the ballots?—A. Yes, sir.

Q. You and the other clerk recorded the result of the reading of those ballots?—A. Yes, sir.

Q. You kept the correct tally?—A. Supposed to be.

Q. You tried to?—A. Yes, sir.

Q. You tried to keep the thing straight and all right and proper, didn't you, that day, as far as you were concerned?—A. As far as I was concerned I did.

Q. You say that Fred Rice picked up one ballot and was in there about 15 minutes?—A. Yes, sir.

Q. Did he pick that ballot up from the floor?—A. Yes, sir.

Q. When that had fallen on the floor he picked it up?—A. No, sir; there was a stack of ballots on the floor.

Q. He picked it up; what did he do with it?—A. Why, I don't know; he handed it to Mr. Smith.

Q. What did Mr. Smith do with it?—A. He put it in the package he had counted.

Q. On the floor?—A. On the floor or table.

Q. There wasn't any change made in that ballot that Fred Rice picked up?—A. I don't think so.

Q. You didn't see anything done with it that was wrong?—A. No, sir.

Q. Now, this man Smith had some ballots lying down on the floor?—A. Yes, sir.

Q. You didn't see anything out of the way about that, did you?—A. No, sir.

Q. I suppose you had a great many ballots there, didn't you?—A. Yes, sir; quite a good many.

Q. They were very large, were they not?—A. Yes, sir.

Q. You had to sort them out?—A. Yes, sir.

Q. I don't suppose you had a very big table to put them on in making that sorting, did you?—A. No, sir; not very large.

Q. You had several tickets, different ballots, that were voted there at that election that day, didn't you? Do you remember how many different ones besides the ones on which the different candidates' names were?—A. No, sir; I don't remember; I couldn't tell you now.

Q. Woman suffrage was voted on and the constitutional amendments?—A. Yes, sir; I think so.

Q. And the ballots on which the candidates' names were you had sorted out and got the straights, hadn't you?—A. Yes, sir.

Q. You had to make different piles of those?—A. Yes, sir.

Q. There wasn't anything unusual at all or out of the way that Mr. Smith laid one ballot on the floor?—A. I didn't say there was.

Q. You would remember if there had been something objectionable; you were in the room?—A. I presume so.

Q. Those ballots that were lying on the floor were all counted by you gentlemen in the final count?—A. I suppose they were.

Q. You didn't let them get away from you, did you?—A. I didn't calculate to.

Q. Nor you didn't find that any of them got away, did you?—A. No, sir.

Q. You stated that some outsiders came in there aside from what you speak of Mr. Rice; other outsiders didn't interfere with the count of the ballots?—A. I didn't say anything about anybody else.

Q. You said some other outsiders came in. Mr. Rice was one of the outsiders?—A. He was the only one I saw.

Q. You didn't mean to say it, then, if you did, and you don't say now that any other outsiders came in there where that board was working except this man Rice?—A. I didn't see anyone else.

Q. You were a Republican on the 5th day of November, A. D. 1912?—A. Yes, sir.

Q. This man Straight was a merchant there in town?—A. No, sir; a farmer.

Q. A good, fair, honorable man?—A. I think so; yes, sir.

Redirect examination by Mr. FELLOWS:

Q. Did you take a noon adjournment?—A. Yes, sir.

Q. How long a time?—A. One hour.

Q. During that noon adjournment was the ballot box kept by any member of that board in their possession?

Mr. ADAMS. I object to that as incompetent and irrelevant and no allegation of such a character is contained in the answer of the contestee, and it is inadmissible and incompetent, and I object to anything on that subject being introduced and to all questions and answers bearing upon that subject.

A. No, sir.

Q. What was done with it?—A. It was left in the hall.

Q. In the polling place?—A. Yes, sir.

Q. The hall was locked up?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. No one was left in the room?—A. No, sir.

Q. The ballot box was locked?—A. Yes, sir.

Q. You went out to lunch at noon and was gone about an hour?—A. Yes, sir.

Q. The inspectors left, and the clerks and gatekeepers, then they locked the door?—A. Yes, sir.

Q. Everything was securely locked up?—A. I think so.

Q. Who took the keys?—A. I had the keys.

Q. You locked the door, did you?—A. Yes, sir.

Q. You knew it was locked?—A. Yes, sir.

Q. There was no opportunity for anybody to get into that room where the box was unless they broke in?—A. I think so.

Q. When you came back after your lunch you found, didn't you, that everything was just exactly as you left it?—A. I think they were; yes, sir.

Q. Nobody had been in there that you could see and in any way tampered with anything you had left there?—A. No, sir.

Q. That is correct?—A. Yes, sir.

Q. The door was locked when you got back?—A. Yes, sir.

Q. And you put the key in and unlocked it?—A. Yes, sir.

O. J. GLEASON, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Gleason, you live in the township of Wright?—A. Yes, sir.

Q. You are the Democratic supervisor in that township?—A. Yes, sir.

Q. How long have you been supervisor there?—A. I have held the office six years, and I was elected again this last spring.

Q. You were supervisor of that township last fall?—A. Yes, sir.

Q. And at the election sat on the board of election in that township?—A. Yes, sir.

Q. Where was the election held last fall?—A. In Plattville.

Q. You alternate the election between Plattville and another village there?—A. Yes, sir.

Q. And it was Plattville's turn this time?—A. Yes, sir.

Q. Who constituted the board?—A. Myself and Howard Williams, as clerks, and Norton Corser was the deputy and Jesse Barber was one of the justices of the peace, and Burton Callow was the other justice.

Q. You had three inspectors and two justices of the peace?—A. Yes, sir.

Q. At the noon hour did you take an adjournment?—A. Yes, sir.

Q. For how long a time?—A. One hour.

Q. Where was the election held in Plattville?—A. It was held in the Grange hall east of the corner.

Q. Was the ballot box sealed up and the seal given to one of the inspectors and the key to another and the books put in there when you went to dinner at noon?—A. The ballot box was sealed, if I remember right, and I held the key to the box.

Q. Do you remember who took the seal?—A. I think the clerk.

Q. Was the ballot box kept in the custody of any of the other inspectors that were left there?—A. It was left in charge of the gatekeeper while we went to dinner.

Q. The hall was not locked up?—A. No, sir.

Q. Do you remember which one of the gatekeepers it was?—A. His name was Alton Thompson.

Q. The members of the board when they went to dinner left him there in charge?—A. Yes, sir.

Q. Now your home is in Waldron?—A. Yes, sir.

Q. Is that where Mr. Barber lives?—A. Yes, sir.

Q. What time did you complete the count so you knew what the result was?—A. Well, I think sometime about 11 o'clock.

Q. Is there a train going south along about that time from Plattville to Waldron?—A. Yes, sir.

Mr. ADAMS. I object to that as immaterial.

The WITNESS. There is a train going south soon after 11 o'clock.

Q. Was Mr. Barber desirous of going home on that train?—A. Yes, sir.

Mr. ADAMS. I object to that as incompetent, irrelevant, immaterial, and hearsay.

Q. Were the returns made out and all the figures put in when Mr. Barber signed the returns?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, and inadmissible under the answer of the contestee in this case; there is no allegation of that character.

A. As I remember, I couldn't be really positive about this matter, but as I remember it was—might have been filed out in the book he—

Q. But the result had been reached?—A. Yes, sir.

Q. Some of the votes were still blank—some of the blanks had not been filled out yet?

Mr. ADAMS. Objected to as leading, and object to counsel leading the witness.

A. Well, I don't know that I can answer positively about the matter.

Q. Your best recollection is all we want.—A. I think that we had the work so nearly completed that we thought he might sign the book, he was so nearly worn out and wanted to take the train home, and there was no need of keeping him there any longer, and he signed the book in each place. I am not positive about the book being all filled out; I could not say exactly.

Q. You have given your best recollection about it?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. Mr. Gleason, this gentleman who you say went away on the train who was a member of your board was Mr. Barber?—A. Yes, sir.

Q. When he went away at 11 o'clock at night you had the count nearly completed?—A. That was 11 o'clock the next day.

Q. You had the count wholly completed at that time?—A. Yes, sir.

Q. You were not quite so expeditious as I thought you were.—A. We had something to do.

Q. Mr. Barber signed the returns before he left, and you and Mr. Shamplo, and Mr. Williams also signed these returns, didn't you?—A. Yes, sir.

Q. Who was the gatekeeper you left in charge?—A. If I remember right it was Alton Thompson.

Q. Alton Thompson?—A. Yes, sir.

Q. When you came back from your lunch election day to this voting place, I suppose you found everything just as you had left it when you went to lunch?—A. Yes, sir.

Q. Did you find any change made there in anything?—A. No, sir.

Q. The ballot box was undisturbed?—A. Yes, sir.

Q. Just as you left it when you went to lunch?—A. Yes, sir; sealed just as we left it.

Q. You sealed it when you went to lunch?—A. Yes, sir.

Q. The seal was unbroken when you came back?—A. Yes, sir; the box was still locked.

Q. Everything was just exactly as you left it when you went to dinner?—A. Yes, sir.

CARYBELLE HANCOCK, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. FELLOWS:

Q. You are deputy county clerk of this county?—A. Yes, sir.

Q. You were deputy county clerk at the time of the election held November 5, 1912?—A. Yes, sir.

Q. Do you recollect the circumstances of the returns coming in of that election?—A. Well, some; yes, sir.

Q. I show you the returns that came into the county clerk from the township of Camden, and on the book, "Received in bad order at Montgomery." Was that written on the package when it came?—A. Yes, sir.

Q. I show you this book, which is in this envelope, and ask you if that is the poll book that was returned from the township of Camden of the election held the 5th day of November, 1912?—A. Yes, sir.

Q. Turn to the first page of it and read to the commissioner the names of the inspectors of that election.—A. Clerk of election, S. E. Hughey, Charles Fast; inspectors of election, W. C. Kentigh, Frank Fast, and Walter Covey.

Q. Turn to the oaths of inspectors, I call your attention to the third oath, which is found on the page where the oaths are recorded, and I will ask you to read that to the commissioner.

Mr. ADAMS. I object to anything in regard to the returns from this township as irrelevant, immaterial, and inadmissible, for the reason that no allegation is contained in the answer of the contestee permitting the introduction of this proof.

A. (Reading:)

"I, William Covey, do solemnly swear, or affirm, that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of inspector of this election according to the best of my ability.

" W. M. COVEY.

" Subscribed and sworn to before me this 5th day of November, A. D. 1912.

" W. M. COVEY,

" *One of the Inspectors of Election.*"

Q. Do you recognize this exhibit which I show you now as being the envelope in which you received the returns from the township of Allen?—A. I think the same one; that is my husband's handwriting.

Q. I show you the certificate on the statement book from the township of Allen, found on the last page of that book, and ask you to read the attestation commencing "In witness whereof."—A. (Reading:)

"In witness whereof we have hereunto set our hands this day of holding said election in said precinct, this 6th day of November, A. D. 1912.

" WILLIAM A. ILES,

" WILLIAM M. BOYLE,

" JAY ELAND,

" MILTON DEYE,

" *Inspectors of Election of Precinct No. —, Township of Allen, Mich.*"

Mr. ADAMS. I move to strike out the answer to the last question and the question itself, on the ground that it is irrelevant and immaterial and inadmissible under the answer of the contestee that no allegation is contained in the answer which would admit this proof, and generally speaking, I object to the introduction of these returns from the various voting places in the county of Hillsdale, as irrelevant and immaterial under the answer of the contestee, there being no allegation contained in the answer which would admit proof on the legality of the returns. If you will consent, I would like to have that apply to all this you offer, and that will save me objecting from time to time.

Mr. FELLOWS. It may be so understood, and that we offer in this case, if it becomes necessary, to amend the answer as filed, and we reserve the right to file an amended answer to the notice of contest.

Mr. ADAMS. I do not want it to appear on the record that we are consenting to the amendment.

Mr. FELLOWS. We don't ask that; it may be understood that we have such an amendment.

Q. I show you the poll book from this same township and ask you to read the attestation clause to the certificate beginning with "In witness whereof."—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in said township of Allen, county of Hillsdale, State of Michigan, this 5th day of November, A. D. 1912.

" WILLIAM A. ILES,

" WILLIAM M. BOYLE,

" JAY ELAND,

" MILTON DEYE,

" *Election Inspectors, Precinct —, Allen Township,
County of Hillsdale, State of Michigan.*"

Q. I show you the tally-sheet book of this same township or precinct, and ask you to read the attestation clause to the certificate on the last page thereof, commencing "In witness whereof."—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct, this 6th day of November, A. D. 1912.

" WILLIAM A. ILES.

" WILLIAM M. BOYLE.

" JAY ELAND.

" MILTON DEYE."

Q. I show you a pouch addressed to the county clerk, at Hillsdale, Mich., purporting to contain the township of Moscow returns, and call your attention to something that appears in writing on the back thereof. Will you read that to the commissioner?—A. (Reading:)

"Received in bad order. W. P. Renard."

Q. Do you know who he is?—A. No, sir; it is some mail clerk, probably.

Q. I show you the poll book found in this envelope returned from this township, on the first page thereof, and ask you to read into the record the names of the inspectors of election and clerks.—A. The clerk of election is M. H. Bleech and Lafayette Siegel, and inspectors of election are George B. Travis, Thomas Clyon, and A. A. Smith.

Q. Turn to the page where the oaths of the inspectors appear, and I call your attention to the first oath of inspector and ask you if the jurat is signed by anyone filled in?—A. It is not.

Q. I call your attention to the certificate found in the back of this poll book of this precinct and ask you to read the attestation clause into the record, commencing with "In witness whereof."—A. (Reading:) "In witness whereof we have hereunto set our hands at the place of holding said election in said township of Moscow, precinct No. —, county of Hillsdale, State of Michigan, this 5th day of November, A. D. 1912.

"T. N. CLYON,

"GEORGE R. TRAVIS,

"WILLIAM STRAIGHT,

*"Election Inspectors, Precinct No. —, Township of Moscow,
County of Hillsdale, State of Michigan."*

Q. I will ask you if on the first page of the oaths of the inspectors you find that William Straight took an oath as inspector?—A. I see he did; yes, sir.

Q. You find a record of his oath?—A. Yes, sir.

Q. I call your attention to the statement book from this same township or precinct and ask you to read into the record the names of the clerks and inspectors in that precinct, as appears by that book.—A. Clerks, M. H. Bleech and Lafayette Siegel; inspectors of election, George R. Travis, Art Smith, and T. M. Tryon.

Q. I ask you to turn in that same book to the return of the statement of votes given for the office of Member of Congress for the third congressional district and ask you to read the whole number of votes.—A. "Whole number of votes given for the office of Congressman, ——— district, was 239." They were given to the following persons: John M. C. Smith, 45; Claude S. Carney, 102; Levant L. Rogers, 3; Edward N. Dingley, 89; total, 239.

Q. I ask you to turn to the certificate found on the last page of the statement book and ask you to read into the record, commencing with the words "In witness whereof."—A. (Reading:) "In witness whereof we have hereunto set our hands at the place of holding said election in said precinct the 5th day of November, A. D. 1912.

"T. M. TRYON,

"GEORGE R. TRAVIS,

"WILLIAM STRAIGHT,

*"Inspectors of Election, Township of Moscow,
County of Hillsdale, State of Michigan."*

Q. I show you what purports to be an envelope addressed to the county clerk at Hillsdale, Mich., purporting to contain the returns from the township of Hillsdale, in this county; do you recognize that?—A. Yes, sir.

Q. I call your attention to the poll book found in the returns from this township and ask you to read from the first page the names of the inspectors of election.—A. Clerks of election, Irving Blurton and Bert Carter; inspectors of election, Frank H. Carter, J. N. Warren, and H. A. Gillett.

Q. Turn to the oaths of inspectors from this precinct and I call your attention to the first oath, commencing with Frank Carter; was that oath signed by Mr. Carter in the place for the signature?—A. No, sir; it is not.

Q. I call your attention to the second oath which appears on that page, which oath is signed by J. N. Warren; is there any signature attached to the jurat to that oath?—A. No, sir.

Q. I call your attention to the oath to the gatekeepers, on the next page—Gilbert B. Lyon—is the jurat to that signed by anyone?—A. No, sir; it is not.

Q. On the page of the poll book where the last name appears, I ask you what is the number of the last voter as appears on the poll book?—A. 120.

Q. Turn to the certificate found in this same book, and I will ask you to state what certificate shows with reference to the number of votes cast?

Mr. ADAMS. Wait a minute. I object to part of it being read.

Q. Read the certificate?—A. (Reading:) "The polls of this election were adjourned at 12 noon for one hour for the purpose of comparing the respective lists, that they may correspond each with the other. Ballot box A was then opened and the list of persons voting placed therein, the ballot box used at this election being carefully locked and sealed in accordance with the provisions of law and delivered to one of the inspectors of this election, the keys to another inspector of election, and the seal to a third inspector, as required by law. The polls of this election were opened at 1 o'clock p. m., after the ballot box had been publicly exhibited at least five minutes previous to breaking the seal thereon. On closing the polls at 5 o'clock a proclamation was made that the polls of this election would be closed at the expiration of 1 hour, 30 minutes, and 15 minutes, respectively, and the polls of the election were closed at 5 o'clock p. m.

"We, the undersigned, do hereby certify that we have carefully enumerated the number of persons having voted, as entered upon and shown by the foregoing poll list, and that the total number of such persons is 115. And we do further return that we have carefully compared the poll list with the duplicate poll list, as required by law, and that all mistakes found in such poll lists have been duly corrected by us and that both of said poll lists are now correct and agree each with the other. We, the undersigned, do further hereby certify that herein is given a full and complete record of the proceedings of the board of election inspectors. In witness whereof we have hereunto set our hands at the place of holding said election in said township of Hillsdale, precinct No. —, county of Hillsdale, State of Michigan, this 5th day of November, A. D. 1912.

"FRANK H. CARTER,
"J. N. WARREN,
"H. A. GILLETT,
"IRVING BLURTON,

"Election Inspectors Precinct No. —, Township of Hillsdale,
"County of Hillsdale, State of Michigan."

Q. I ask you to read into the record the attestation clause that appears to that certificate in the statement of votes, commencing "in witness whereof."—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this 6th day of November, A. D. 1912.

"FRANK H. CARTER,
"J. N. WARREN,
"H. A. GILLETT,
"IRVING BLURTON,

"Election Inspectors Precinct No. —, Township of Hillsdale,
"County of Hillsdale, State of Michigan."

Q. I now show you this envelope, addressed to the county clerk, Hillsdale, purporting to contain the returns from the township of Wright, county of Hillsdale; do you recognize that as one of the files in your office?—A. Yes, sir.

Q. I call your attention to the poll book of the township of Wright and ask you to read the names of the inspectors of election and clerks.—A. Howard S. Williams, clerk, and J. M. Casey. Inspectors of election: O. J. Gleason, Jesse Barber, and Burton Shamplo.

Q. Turn to the oaths of inspectors, and I call your attention to the third oath of inspector, signed by Burton Shamplo; is there any signature to the jurat to his oath?—A. There is not.

Q. As far as anything appears from this return, was he sworn as an inspector?—A. No, sir.

Q. Will you turn to the certificate in that poll book and read the attestation clause?—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in the said township of Wright, county of Hillsdale, State of Michigan, on the 5th day of November, A. D. 1912.

"O. J. GLEASON,
"HOWARD S. WILLIAMS,
"BURTON SHAMPLO,
"JESSE BARBER.

"Election Inspectors Precinct No. —, Township of Wright,
"County of Hillsdale, State of Michigan."

Q. Turn to the statement book from this same precinct, and I ask you to read the attestation clause that appears to the certificate in that book.—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this — day of November, A. D. 1912.

"BURTON SHAMPLO,
"JESSE BARBER,
"HOWARD S. WILLIAMS,
"O. J. GLEASON,

"*Election Inspectors Township of Wright,
"County of Hillsdale, State of Michigan."*

Q. I show you the tally-sheet book and ask you to read the certificate that appears at the end of the book.

Mr. ADAMS. I object to the witness reading any certificates that are contained in the tally-sheet book in these townships and voting precincts, as no certificate is required by law to be in the tally-sheet book.

A. (Reading:)

"We the undersigned board of election inspectors, do hereby certify that the foregoing is a correct tally of all the votes cast at the general election held on —, in the township of —, county of —, State of Michigan, on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this — day of November, A. D. 1912.

"O. J. GLEASON,
"BURTON SHAMPLO,
"HOWARD S. WILLIAMS,
"JESSE BARBER,

"*Election Inspectors, Precinct —, Township of Wright,
"County of Hillsdale, State of Michigan."*

Q. I show you an envelope addressed to the county clerk at Hillsdale, purporting to contain the returns from the township of Woodbridge, Hillsdale County. Do you recognize that as one of the papers from your office?—A. Yes, sir.

Q. I show you the statement book from this precinct and ask you if on the first page thereof there are any of the blanks filled in?—A. No, sir: nothing.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial. The first page in all these books do not seem to be any part of the returns, but simply the title-page.

Q. Does the first page show what precinct or what township or what county this statement of votes is from?—A. No, sir.

Q. Does it contain anything showing the names of the clerks or inspectors of election?—A. No, sir.

Q. Turn to the certificate in this book and I ask you to read the attestation clause, commencing with the words "In witness whereof"—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this — day of November, A. D. 1912

"CLARENCE LUPHENS,
"ED M. GAVITT,
"HENRY FWINC
"WILLIAM MILLS,

"*Election Inspectors, Precinct —, Township of Woodbridge,
"County of Hillsdale, State of Michigan."*

Q. I will ask you whether this envelope addressed to the county clerk Hillsdale, purporting to contain the returns from the first ward of Hillsdale, you recognize?—A. The fourth ward; yes, sir.

Q. Is that one of the files from your office?—A. Yes, sir.

Q. I show you the poll book, on the first page thereof, and ask you to read the names of the clerks and inspectors of that election.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial. It is nothing but the title-page.

A. Clerks of election S. A. Lyon and N. B. Marsh; and the inspectors of election are Mr. O'Hallon and Mr. Bates—W. P. Bates.

Q. Turn to the page where you find the oaths, and I will ask you to state, without reading all of them, how many inspectors were sworn in there; I mean, where the word "inspector" appears in the oath?—A. Four.

Q. Four inspectors?—A. Yes, sir

Q. Was S. A. Lyon sworn as an inspector?—A. Yes, sir.

Q. Was N. B. Marsh sworn as a clerk?—A. Yes, sir.

Q. Was N. B. Marsh the only one sworn as a clerk?—A. Yes, sir.

Q. Turn to the certificate found in the book, and I ask you to read the attestation clause.—A. S. A. Lyon I find was appointed clerk.

Q. What page is that on?—A. The first page.

Q. He was sworn in as inspector?—A. Yes, sir.

Q. It appears in the certificate at the top of the page that he was appointed clerk?—A. Yes, sir.

Q. He was sworn in as an inspector?—A. Yes, sir.

Q. Read the attestation clause.—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in said fourth ward, precinct No. —, of the city of Hillsdale, State of Michigan, this 6th day of November, A. D. 1912.

"O. O'HALLON,

"W. P. BATES,

"S. A. LYON,

*"Election Inspectors, Precinct No. —, Fourth Ward,
City of Hillsdale, State of Michigan."*

Q. Turn to the statement book of the fourth ward of the City of Hillsdale, and I ask you to read the attestation clause to the certificate found in the book, commencing with the words "In witness whereof."—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct, the 5th day of November, A. D. 1912.

O. O'HALLON,

"Inspector of Election, Fourth Ward,

City of Hillsdale, State of Michigan."

Q. Are there any other signatures to it?—A. No, sir.

Q. Turn to the tally-sheet book of that same precinct, the fourth ward, to the office of Congressman, third district, and see if you find there the name of John M. C. Smith.—A. Yes, sir.

Q. Read the names of the other candidates you find there.—A. Claude S. Carney.

Q. Do you find any tally marks under his name?—A. No, sir.

Q. The next name?—A. Levant L. Rogers and Edward N. Dingley.

Q. Opposite that in the last column, under the name John M. C. Smith, read the number of straight votes.—A. One hundred and one. Tally votes, 13; total votes, 114.

Q. Read the same with reference to Claude S. Carney.—A. Claude S. Carney, straight votes, 120; tally votes, 8; total votes, 128. Levant L. Rogers, straight votes, 6; tally votes, 1; total votes, 7. Edward N. Dingley, straight votes, 84; tally votes, 13; total votes, 97.

Q. I show you an envelope addressed to the county clerk, Hillsdale, purporting to contain the returns from the first ward of the city of Hillsdale; do you recognize that as a paper from your office?—A. Yes, sir.

Q. I show you the first page of the poll book and ask you to read the names of the clerks and inspectors of election in that ward.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and nothing but the title-page of the book.

A. Clerks, C. A. Terwilliger and E. E. Ransiel; inspectors of election, William R. Montgomery, J. B. Whitney, C. H. Menton, C. W. Terwilliger.

Q. Turn to the oaths of clerks and inspectors in this same book, and I ask you if it appears that C. W. Terwilliger was sworn both as clerk and inspector?—A. Yes, sir.

Q. Turn to the certificate in the poll book, in the back thereof, and I ask you to read that certificate into the record.—A. (Reading:)

"At 4.30 o'clock and 4.45 o'clock p. m. a proclamation was made that the polls of this election would be closed at the expiration of 1 hour, 30 minutes, 15 minutes, respectively, and the polls of said election were closed at 5 o'clock p. m.

"CERTIFICATE.

"We, the undersigned, do hereby certify that we have carefully enumerated the number of persons having voted, as entered upon and shown by the foregoing poll list, and the total number of such persons is —. We do further

hereby certify that the foregoing poll lists have been carefully compared with the duplicate list, as required by law, and that all mistakes found in such poll lists have been duly corrected by us, and that both said poll lists are now correct and agree each with the other. We, the undersigned board of election inspectors, do further hereby certify that herein is given a true and complete record of the proceedings of this board of election inspectors. In witness whereof we have hereunto set our hands at the place of holding said election in said ward and precinct — on the 5th day of November, A. D. 1912.

"W. R. MONTGOMERY,

"J. B. WHITNEY,

"C. H. MENTON,

"C. W. TERWILLIGER,

"Election Inspectors Precinct No. —, First Ward,

"City of Hillsdale, State of Michigan."

Q. Turn to the tally book, and I ask you to read from the first page the names of the inspectors and clerks as appears from that book.

Mr. ADAMS. I object to that as irrelevant and immaterial to the point at issue.

A. Clerks of election, W. R. Montgomery, E. E. Ransiel, C. W. Terwilliger; inspectors of election, J. B. Whitney, C. H. Menton, and C. W. Terwilliger.

Q. Is there a certificate appearing in that book?—A. In witness whereof we have hereunto set our hands at the place of holding said election—

Mr. ADAMS. I object to the final certificate about to be read in this tally-sheet book as incompetent, irrelevant, and immaterial and not a certificate required to that book by law.

A. (Continuing reading:) "In witness whereof we have hereunto set our hands, at the place of holding said election, in said precinct, this 5th day of November, A. D. 1912.

"W. R. MONTGOMERY,

"J. B. WHITNEY,

"C. H. MENTON,

"C. W. TERWILLIGER,

"Inspectors of Election First Ward of the City of Hillsdale,

"Hillsdale County, State of Michigan."

Q. Read the names of the clerks and inspectors of election as appear on this page of the statement book from this same precinct.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

A. Clerks of election, E. E. Ransiel, C. W. Terwilliger; inspectors of election, W. R. Montgomery, J. B. Whitney, C. H. Menton, and C. W. Terwilliger.

Mr. ADAMS. I object to that; that is only the title-page, and it is incompetent, irrelevant, and immaterial.

Q. I show you this envelope addressed to the county clerk, purporting to contain the returns from the second ward of the city of Hillsdale, and ask you whether you recognize that as a paper from your office.—A. Yes, sir.

Q. I show you the poll book from this precinct and ask you to read the names of the clerks and inspectors of election appearing there.

Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and being only the title-page of the book.

A. Clerks of election, M. D. Mills and F. A. Jackson; inspectors of election, G. A. Jackson, Simon Woodruff, F. H. Guerney, and R. J. Corlett.

Q. Turn to the oaths. I will ask you if G. A. Jackson took the oath as inspector and also as clerk?—A. Yes, sir.

Q. Did he administer an oath to any of the other inspectors?—A. He did to M. D. Mills; also Mr. Corlett and Mr. Guerney.

Q. How has he signed the jurat in each instance?—A. G. A. Jackson.

Q. What is his official designation?—A. "One of the inspectors of election."

Q. Read the attestation clause that appears in the certificate found in the poll book of this ward.—A. (Reading:)

"At 4 o'clock, 4.30, and 4.45 p. m. a proclamation was made that the polls of this election would be closed at the expiration of 1 hour, 30 minutes, and 15 minutes, respectively. The polls of said election were closed at 5 o'clock p. m.

"CERTIFICATE.

"We, the undersigned, do hereby certify that we have carefully enumerated the number of persons having voted as entered upon and shown by the fore-

going poll lists, and that the total number of such persons is 303. We do further certify that the foregoing poll lists have been carefully compared by us with the duplicate poll list as required by law, and that all mistakes found in such poll lists have been duly corrected by us and that both said poll lists are now correct and agree each with the other. We, the undersigned board of election inspectors, do further hereby certify that herein is given a true and complete record of the proceedings of the board of election inspectors.

"In witness whereof we have hereunto set our hands, at the place of holding said election, in said second ward, precinct No. —, city of Hillsdale, State of Michigan, this 5th day of November, A. D. 1912.

" C. H. GUERNEY,

" G. A. JACKSON,

" SIMON S. WOODRUFF,

" M. D. MILLS,

" *Inspectors of Election of Precinct No. —, Second Ward,*

" *City of Hillsdale, State of Michigan.*"

Q. Referring to the oaths in this same book, I call your attention to the last oath of inspector, purporting to be signed by Simon S. Woodruff, and ask you if there is any jurat attached to that oath?—A. No, sir.

Q. As far as that appears, was he sworn as an inspector?—A. No, sir.

Q. I call your attention to the tally sheet from this same ward and to the vote on Congressman and ask you to state what name is first in the statement of votes?—A. Claude S. Carney.

Q. Do you recollect which candidate was first on the ticket first printed?

Mr. ADAMS. I object to that as irrelevant and immaterial; the ticket is the best evidence; and is the conclusion of the witness, and is not the best evidence.

A. The Republican.

Q. What appears there with reference to the vote received for Claude S. Carney?—A. Claude S. Carney, straight votes, 49; tallies, 44; total, 93.

Q. What is the next name that appears?—A. Edward N. Dingley.

Q. Give us the vote.—A. Straight votes, 28; tally votes, 82; total, 110.

Q. The next one?—A. John M. C. Smith. Straight votes, 32; tally votes, 50; total, 82. Levant L. Rogers, tally votes, 1; total, 1.

Q. Now, turn to the certificate of correctness of the tally found at the back part of the end of the tally-sheet book; is that certificate filled out or signed at all?—A. No, sir.

Q. No signature?—A. No, sir.

Q. No signatures of anyone and none of the blanks filled out?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial; none is required.

Q. I call your attention to the statement book of this same precinct and ask you to read the names of the election inspectors, as appears from the first page thereof.

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial; it is only the title page of the book.

A. Clerks of election: M. D. Mills and G. A. Jackson. Inspectors of election: C. H. Guernsey, R. J. Corlett, G. A. Jackson, and Simon Woodruff.

Q. I show you now an envelope, addressed to the county clerk, purporting to contain the returns from the township of Reading, and ask you whether you recognize that as a paper from your office?—A. Yes, sir.

Q. I show you the poll book from the township of Reading and ask you to read the certificate that appears at the end thereof. Maybe we can shorten it if the judge will examine it; it does not certify to the number of votes polled in this precinct; but if you prefer, I can read it at large.

Mr. ADAMS. We will concede that the certificate you refer to does not give the total number of votes cast, but we object to it as irrelevant and immaterial, whether it does or not.

Cross-examination by Mr. ADAMS:

Q. Counsel for the contestee asked you or showed you the poll book of the township of Reading, Hillsdale County, and called your attention to the fact that the final certificate in the book did not recite the total number of persons as having voted as entered upon and shown by the foregoing poll lists. I will call your attention to that book and ask you to state whether the poll book—this poll book—does not show that 491 persons voted at that election?—A. I suppose it does.

Q. Four hundred and ninety-one names are entered in there?—A. Yes, sir.

Q. In that particular poll book to which that certificate I referred to is attached?—A. Yes, sir.

Q. Opposite the name of each voter is a number, is there not?—A. Yes, sir.

Q. It begins with the first voter as No. 1, does it not?—A. Yes, sir.

Q. And the last voter is 491?—A. Yes, sir.

Q. The name of each voter is given in that poll book?—A. Yes, sir.

Q. It is a part of the book to which that certificate is attached?—A. Yes, sir.

Q. So the book shows for itself how many voters there were at that election that day?—A. Why, I suppose so.

Q. Referring now to the second ward of the city of Hillsdale, counsel called your attention to the poll book. To that same poll book I again call your attention and ask you whether G. A. Jackson did not administer an oath to some of the inspectors of that election?—A. Yes, sir.

Q. And also to one of the clerks and one of the gatekeepers, and I think you replied that he did. That is true, isn't it?—A. Yes, sir.

Q. But before there is any certificate or oath taken in that poll book, which G. A. Jackson signed as one of the inspectors of election, there appears a certificate which was signed by G. A. Jackson and sworn to before C. H. Guerney?—A. Yes, sir.

Q. The first oath appearing in that poll book read on the record.—A. (Reading:)

“STATE OF MICHIGAN, *County of Hillsdale*, ss:

“I, G. A. Jackson, do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of inspector of this election according to the best of my ability.

“G. A. JACKSON.

“Taken, subscribed, and sworn to before me this 5th day of November, A. D. 1912.

“C. H. GUERNEY,

“*One of the inspectors of election.*”

Q. So the name of G. A. Jackson that is attached to the jurat in that poll book comes after the certificate just read to that oath that was subscribed by G. A. Jackson?—A. No, sir.

Q. Where is there one ahead of it?—A. Not ahead of it; I thought you meant after.

Q. G. A. Jackson did not take the oath, as appears from the oaths that were taken on the record in that poll book until after he had taken an oath before C. H. Guerney, did he?—A. No, sir.

Q. I call your attention to the tally-sheet book which counsel for the contestee called your attention to, in the second ward of the city of Hillsdale, and especially to the votes for the different candidates for Congressman contained in that book, and in connection with that I also call your attention to the statement of votes in the second ward of the city of Hillsdale, and ask you now to read from the statement book of this second ward of the city of Hillsdale how many votes Claude S. Carney got for Representative in Congress?—A. Ninety-three.

Q. Does that correspond with the total number of votes as contained in the tally sheet book?—A. Yes, sir.

Q. How many votes did Edward N. Dingley get for Representative in Congress as shown by this statement book?—A. One hundred and ten.

Q. How many votes did Edward N. Dingley get as shown—total votes—as shown by the tally-sheet book?—A. One hundred and ten.

Q. Referring to the name of John M. C. Smith in the statement book, how many votes are there recorded for John M. C. Smith for Representative in Congress?—A. Eighty-two.

Q. How many are recorded in the tally-sheet book from the same precinct?—A. Eighty-two.

Q. How many are recorded for Levant L. Rogers?—A. One.

Q. How many in that tally-sheet book?—A. One.

Q. Both of those books are from the same second ward in the city of Hillsdale?—A. Yes, sir.

Q. I again call your attention to that statement book, second ward, city of Hillsdale, from which you just read the number of votes received by the respective candidates for Congress, and I wish you would read the certificate at the end of the statement book.—A. (Reading:)

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct the 5th day of November, A. D. 1912.

"C. H. GUERNE,
"G. A. JACKSON,
"SIMON WOODEUFF,
"R. J. CORLETT,

*"Inspectors of the Second Ward
of the City of Hillsdale, State of Michigan."*

Q. You just read the conclusion?—A. I thought that was what you wanted.

Q. I would like the whole thing in, if I can get it in; read the whole certificate.—A. (Reading:)

"We, the undersigned members of the board of election inspectors, do hereby certify that the foregoing is a full, true, and complete statement of all the votes cast at the general election in the second ward, city of Hillsdale, State of Michigan, on Tuesday, November 5, A. D. 1912, for the election of officers and for the purpose of voting upon the propositions as set forth in the foregoing statement of votes. We, the undersigned board of election inspectors, do further hereby certify that all the returns of this board of election inspectors of even date herewith are true and correct.

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct on the 5th day of November, A. D. 1912.

"C. H. GUERNE,
"G. A. JACKSON,
"SIMON WOODEUFF,
"R. J. CORLETT,

*"Election Inspectors, Second Ward,
City of Hillsdale, State of Michigan."*

Q. I call your attention to the statement book of the general election held November 5, 1912, the first ward of the city of Hillsdale, being one of the returns in that district to which your attention was called by counsel for the contestee and ask you to read so much of the final certificate thereon as you read from the statement book last shown you?—A. (Reading:)

"We, the undersigned board of election inspectors, do hereby certify that the foregoing is a full, true, and complete statement of all the votes cast at the general election held in the first ward of the city of Hillsdale, State of Michigan, on Tuesday, November 5, 1912, for the election of officers and for the purpose of voting upon the propositions as set forth in the foregoing statement of votes. We, the undersigned board of election inspectors, do hereby certify that all the returns of this board of election inspectors of even date herewith are true and correct.

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this 5th day of November, A. D. 1912.

"W. R. MONTGOMERY,
"J. B. WHITNEY,
"C. H. MENTON,
"C. W. TERWILLIGER,

"Election Inspectors, First Ward of the City of Hillsdale."

Q. Your attention is called to the poll book from the fourth ward of the city of Hillsdale, and I wish you would read the certificate, the final certificate, of the correctness of the tally contained in the tally-sheet book of the fourth ward of the city of Hillsdale, November 5, 1912, general election.—A. (Reading:)

"We, the undersigned board of election inspectors, do hereby certify that the foregoing is a correct tally of all the votes cast at the general election held at the council rooms in the fourth ward of the city of Hillsdale, State of Michigan, on Tuesday, the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct on the 5th day of November, A. D. 1912.

"OWEN O'HALLON,
"CHAS. W. CHAPPELL,
"W. P. BATES,
"S. A. LYON,

"Inspectors of Election, Fourth Ward, City of Hillsdale,

"County of Hillsdale, State of Michigan."

Q. Now, referring to that page of this tally-sheet book from which you just read that certificate, I call your attention to the tally of votes cast for all the candidates for the office of Congressman in the third district, and I wish you would read what you find there?—A. (Reading:)

“John M. C. Smith, straight votes, 101; tally votes, 13; total votes, 114.

“Claude S. Carney, straight votes, 120; tally votes, 8; total votes, 128.

“Levant L. Rogers, straight votes, 6; tally votes, 1; total votes, 7.

“Edward N. Dingley, straight votes, 84; tally votes, 13; total votes, 97.”

Q. I show you the statement book to which counsel called your attention on your direct examination, the statement book of the fourth ward of the city of Hillsdale of the November 5, 1912, general election, and to that page thereof which has the vote for the respective candidates for Congress in the third district, and I wish you would read there what you find.—A. (Reading:)

“John M. C. Smith, 114; Claude S. Carney, 128; Levant L. Rogers, 7; Edward N. Dingley, 97; total, 346.”

Q. Those figures are in the column headed “Number of votes received,” those figures you just read?—A. Yes, sir.

Q. Opposite the figures you have just read in each instance do the written words showing the number of votes that each received correspond to those figures?—A. Yes, sir.

Q. Well, that tally sheet book of the fourth ward of the city of Hillsdale, to which you have been referring, does not appear to have any tally marks under the respective candidates' names for Congressman in the third district, under the name of each candidate for Representative in Congress in that third district, which show the number of tally votes each received; it is carried out in figures?—A. Yes, sir.

Q. But it is not tallies under each name?—A. No, sir.

Q. The tally marks, I mean, under each name?—A. No, sir.

Q. Counsel called your attention to the statement book of the general election held November 5, 1912, which was contained in an envelope containing the returns from the township of Woodbridge.—A. Yes, sir.

Q. Of the county of Hillsdale of that election, didn't he?—A. Yes, sir.

Q. I call your attention to the first page of that book. You testified that was not filled out?—A. Yes, sir; I did.

Q. Is that correct?—A. Yes, sir.

Q. I ask you to read what is printed on the outside page of that book just as it is?—A. (Reading:)

“General election of November 5, 1912, statement of votes. Township of Woodbridge, precinct No. ———, county of Hillsdale, State of Michigan.”

Q. So there is now on that book showing what township that return is from after all, isn't there?—A. Yes, sir.

Q. I call your attention to the tally sheet book of the general election held November 5, 1912, in the township of Woodbridge, county of Hillsdale, State of Michigan, and I would like to have you read, please, what you find in that book under the heading of the tally of all the votes cast for all the candidates for Congressman in the third congressional district?—A. (Reading:)

“John M. C. Smith, straight votes, 13; tally votes, 31; total votes, 44.

“Claude S. Carney, straight votes, 64; tally votes, 23; total, 87.

“Levant L. Rogers, tally votes, 3; total 3.

“Edward N. Dingley, straight votes, 43; tally votes, 76; total, 119.”

Q. Well, read the final certificate that you find in that tally sheet book.—A. (Reading:)

“Certificate of correctness of tally. We the undersigned board of election inspectors do hereby certify that the foregoing is a correct tally of all the votes cast at the general election held at the townhouse in the township of Woodbridge, precinct No. ———, of the general election held on Tuesday the 5th day of November, A. D. 1912.

“In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this 5th day of November, A. D. 1912.

“CLARENCE LAMPHERE,

“DANIEL W. GAVITT,

“HENRY EWING,

“WILLIAM D. MILLS,

“Election Inspectors of Precinct No. ———, Township of Woodbridge,

“County of Hillsdale, State of Michigan.”

Q. I show you the statement book from the township of Woodbridge of the November 5, 1912, general election. Will you read what you find in that book under "Votes given for the different candidates for Congress in the third congressional district?"—A. (Reading:)

"John M. C. Smith, 44; Levant L. Rogers, 3; Claude S. Carney, 87; Edward N. Dingley, 119; total, 253."

Q. I call your attention to the poll book from the township of Wright in the general election held on November 5, 1912, and ask you to read what is contained after the word "certificate" on the back of the record?—A. (Reading:)

"We, the undersigned, do hereby certify that we have carefully enumerated the number of persons having voted as shown by the foregoing poll list and the total number of such persons is four hundred and forty-nine, and in figures 449. We do further hereby certify that the foregoing poll lists have been carefully compared by us with the duplicate poll list as required by law, and that all mistakes found in such poll lists have been duly corrected by us, and that both said poll lists now agree each with the other.

"We, the undersigned board of election inspectors, do further hereby certify that herein is given a true and complete record of the proceedings of said board of election inspectors.

"In witness whereof we have hereunto set our hands at the place of holding said election in said township of Wright, precinct No. ———, county of Hillsdale, State of Michigan, this 5th day of November, A. D. 1912.

"ALBERT NELSON,

"HOWARD S. WILLIAMS,

"BURTON SHAMPLO,

"JESSE BARBER,

"Election Inspectors of Precinct No. ———, Township of Wright,

"County of Hillsdale, State of Michigan."

Q. I call your attention to the poll book of the general election held November 5, 1912, of the township of Hillsdale, and particularly to the names of the persons voting recorded in that book. Now, there are 120 names in that poll book, are there not?—A. Yes, sir.

Q. Written in ink?—A. Yes, sir.

Q. And the No. 120 is opposite the last name, isn't it?—A. Yes, sir.

Q. There are 120 numbers in there, and the last name is opposite the No. 120?—A. Yes, sir.

Q. That is correct, rather than what I asked you before?—A. Yes, sir.

Q. Now, opposite and in the line of the figures 16 the sixteenth name appears. Is there any other name in there?—A. J. Drawnout.

Q. There is a cipher opposite that, isn't there?—A. Yes, sir.

Q. And opposite the figures 16 there are two ciphers?—A. Yes, sir.

Q. Passing along to the figures 58, just before that and opposite the 57, is the name D. E. Ewing?—A. Yes, sir.

Q. Opposite the figures 59 is what?—A. Chris. Lozendy.

Q. Opposite the 58 is the word "out"?—A. Yes, sir.

Q. And opposite of that are two ciphers?—A. Yes, sir.

Q. Opposite to the figures 76 what do you find?—A. "Out" and two ciphers.

Q. Opposite the figures 85 what do you find?—A. "Thrown out" and two ciphers.

Mr. ADAMS. I will withdraw that last question.

Q. Opposite the "84" what do you find?—A. I find there has been a name written in then over that in lead pencil, the word "out," and two ciphers; evidently trying to erase the name under it.

Mr. ADAMS. I move to strike out what evidently appears.

Q. Opposite the figures "85" what do you find?—A. "Thrown out."

Q. And what?—A. And two ciphers.

Q. So in five places there are ciphers shown?—A. Yes, sir.

Q. That is correct?—A. Yes, sir.

Q. There are only 114 names on that book?—A. That is what I think; yes, sir.

Q. Now I call your attention to a book that is entitled "Inspectors' Statement, 1912, Township of Hillsdale, County of Hillsdale," at the November 5, 1912, election, containing a statement of the votes cast at that election and returned by the board of inspectors of the township to your office, isn't it?—A. Yes, sir.

Q. I wish you would read from that what you find under the head of "Whole number of votes cast for the office of Representative in Congress" and give the names?—A. (Reading:)

"The total number is 112, and they were given to the following-named persons: John M. C. Smith received 26; Claude S. Carney received 31; Levant L. Rogers received 1; Edward N. Dingley received 54."

Q. Referring to the statement book of the vote for Representative in Congress in that township November 5, 1912, general election, what do you find there of the votes cast for the office of Representative in Congress?—A. John M. C. Smith, 26; Claude S. Carney, 31; Levant L. Rogers, 1; Edward N. Dingley, 54—total, 112.

Q. That book you last read from is the book that counsel for the contestee asked you to read the final certificate from, isn't it?—A. I think so; yes, sir.

Q. I want to have you read the certificate from this book that is entitled, "Inspectors' Statement, 1912," and have you first give the figures from that township of Hillsdale for the several candidates for Representative in Congress.—A. (Reading:)

"STATE OF MICHIGAN, *County of Hillsdale*, ss:

"We do hereby certify that the foregoing is a correct statement of the votes given in the township of Hillsdale, county of Hillsdale, for the officers named in such statement and for the persons designated therein at the general election held in said townhouse on the 5th day of November, A. D. 1912.

"In witness whereof we have hereunto set our hands at the townhouse in said county and State this 5th day of November, A. D. 1912.

"FRANK H. CARTER,
"J. N. WARREN,
"H. A. GILLET,
"IRVING BLURTON,
"*Inspectors of Election.*"

The rest of the certificate is not filled out.

Q. This book containing this last certificate you just read was the book that was returned to the office of the county clerk of Hillsdale County, was it not?—A. Yes, sir.

Q. From the township of Hillsdale, together with these other books to which counsel for the contestee directed your attention on your direct examination?—A. Yes, sir.

Q. Refer to the envelope which contained the returns that came to the office of the county clerk from the township of Moscow, Hillsdale County, from the election board that acted on November 5, 1912; you stated that there was writing on the back of that envelope, "Received in bad order—W. J. Drawn-out." You didn't see anybody write that on there?—A. No, sir.

Q. You don't know of your own knowledge who wrote it there?—A. No, sir.

Q. When this envelope came to your office, did you see it?—A. Yes, sir.

Q. When it came it was delivered to your office?—A. Yes, sir.

Q. Who delivered it?—A. One of the postmen.

Q. One of the postmen from the city of Hillsdale?—A. Yes, sir.

Q. What condition was it in when it came to your office?—A. I think just the seal was broken.

Q. One seal, or both?—A. I think both of them.

Q. When it reached your hands as deputy county clerk you were deputy county clerk?—A. Yes, sir.

Q. And were then?—A. Yes, sir.

Q. When it came there to the office and you first saw it, did it contain the tally sheet book, the statement book, and the poll book to which your attention has been directed by counsel for the contestee on your direct examination?—A. I couldn't say about that, because sometimes the clerks make mistakes. I suppose it did.

Q. You think these are the three books contained in that envelope when it arrived first in the office of the county clerk of this county?—A. Yes, sir.

Q. I don't suppose that you in any way changed any of these returns after they came into your office?—A. No, sir.

Q. You took good care of them after they came in to see that nobody else changed them, didn't you?—A. Yes, sir.

Q. So that, as far as you know, they are now in just exactly the same condition as they were when received by your office?—A. With this exception: That when we looked them over and found mistakes, when the board was looking

them over we found lead-pencil marks in some of them which showed corrections in errors.

Q. Will you look through that tally sheet book, statement book, and the poll book from that township of Moscow, Hillsdale County, and see if there are any marks in any one of those books which were not in there when those books came into your office first in that election; if so, will you please state what they are?—A. I don't see anything.

Q. Just take the Congressmen; that is all we are interested in.—A. There is nothing there.

Q. Do you find anything, as far as the certificates are concerned, or so far as anything in this book, or in any one of them, relating to the Congressmen who were voted for in the third congressional district, any change from what those records were when they first came into your office?—A. No, sir.

Mr. FELLOWS. I move to strike out the inspectors' statement as not any part of the returns they should have made.

Mr. ADAMS. It is a part of the returns, and it is there to consider.

Q. Referring again to the township of Moscow, I wish you would read from the tally sheet book what that shows, as far as the votes cast for the several candidates for Representatives in Congress in the third congressional district.—

A. John M. C. Smith, straight votes, 15; tally votes, 30; total votes, 45.

Claude S. Carney, straight votes, 71; tally votes, 31; total, 102.

Levant L. Rogers, straight votes, 1; tally votes, 2; total, 3.

Edward N. Dingley, straight votes, 18; tally votes, 71; total, 89.

Q. Carney—that is Claude S. Carney, isn't it?—A. C-l-a-u-d it is; it might be C-l-o-u-d.

Q. That is the only Carney who is voted for as Representative in Congress, the only candidate by the name of Carney, as shown in that book or in the tally sheet book of the election returns from the township of Moscow; isn't that so?—A. I found A. F. Carney.

Q. He is the only Carney?—A. The only Carney.

Q. Who was a candidate for Representative in Congress on any ticket?—A. Yes, sir.

Q. As far as this statement book and the tally sheet book from the township of Moscow show that is right?—A. Yes, sir.

Q. I show you the statement book of the general election held November 5, 1912; also the tally sheet book and poll book from the township of Allen, and I wish you would read the certificate at the conclusion of the statement book.—

A. (Reading:) "We, the undersigned board of election inspectors, do hereby certify that the foregoing is a full, true, and complete statement of all the votes cast at the general election held in said township of Allen, county of Hillsdale, on Tuesday November 5, A. D. 1912 for the election of officers and for the purpose of voting upon the propositions as set forth in the foregoing statement of votes. We, the undersigned board of election inspectors, do hereby certify that the returns of this board of election inspectors of even date herewith are true and correct.

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this 6th day of November, A. D. 1912.

"WILLIAM ILES,

"WM. M. BOYLE,

"JAY ELAND,

"MILTON DEYE.

"Election Inspectors of Precinct No. ———, Township

"of Allen, County of Hillsdale, State of Michigan."

Q. Please read the certificate you find in the tally sheet book from that township of Allen?—A. (Reading:)

"We, the undersigned board of election inspectors, do hereby certify that the foregoing is a correct tally of all the votes cast at the general election held at Ford's Hall, in the township of Allen, county of Hillsdale, State of Michigan, on Tuesday, the 5th day of November, A. D., 1912.

"In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this 6th day of November, A. D. 1912.

"WILLIAM ILES,

"WM. M. BOYLE,

"JAY ELAND,

"MILTON DEYE,

"Election Inspectors of Precinct No. ———, Township

"of Allen, County of Hillsdale, State of Michigan."

Q. Will you read the certificate at the conclusion of the poll book from the township of Allen?—A. (Reading:)

"We, the undersigned, do hereby certify that we have carefully enumerated the number of persons having voted as entered upon and shown by the foregoing poll lists and that the total number of such persons is 310. We do further hereby certify that the foregoing poll list has been carefully compared by us with the duplicate poll list as required by law and that all mistakes found in such poll lists have been duly corrected by us and that both said poll lists are now correct and agree each with the other. We, the undersigned board of election inspectors, do further hereby certify that herein is given a true and complete record of the proceedings of this board of election inspectors.

"In witness whereof we have hereunto set our hands at the place of holding said election in said township of Allen, county of Hillsdale, State of Michigan, on this 5th day of November, A. D. 1912.

"WILLIAM ILES,
"WM. M. BOYLE,
"JAY ELAND,
"MILTON DEYE,

*"Election Inspectors of the Township of Allen,
"County of Hillsdale, State of Michigan."*

Q. Now, referring to the envelope containing the returns from the township of Camden, Hillsdale County, of the November 5, 1912, election, I understood you to testify on your direct examination that that was received in the county clerk's office and had indorsed on the back "Received in bad order at Montgomery."—A. Yes, sir.

Q. You didn't see those words "Received in bad order at Montgomery"—you were not present when they were indorsed on there?—A. No, sir.

Q. Montgomery is some station in this county?—A. Yes, sir.

Q. Do you remember what condition that envelope was in when it came into your possession?—A. Simply that the seals were broken.

Q. Were all the seals broken?—A. Yes, sir.

Q. These are sealing wax seals?—A. Yes, sir.

Q. Those are the only seals on it?—A. Yes, sir.

Q. They are very brittle, are they not?—A. Yes, sir.

Q. When these returns came into your office they were the same, as far as the returns were concerned, as they are now?—A. Yes, sir.

Q. Your office, when you received them, I suppose took care of them to see that nobody made any changes in them after they came into your care?—A. Yes, sir.

Q. And you know that no changes have been made in them?—A. Nothing; no, sir; only as recorded.

Q. Do you find any changes? Look them over and see whether there are any changes made in them since they came into the possession of the county clerk of Hillsdale County, as far as any of the certificates are concerned and as far as any of the tallies are concerned, which in any way relate to the office of Congressman for the third congressional district of Michigan.—A. Nothing.

Q. You turned them over to the board of county canvassers, didn't you, when the board met to canvass the votes?—A. Yes, sir.

Q. That was cast at that election?—A. Yes, sir.

Redirect examination by Mr. FELLOWS:

Q. Mrs. Hancock. I ask you what this book is I now show you?—A. It is the canvass book of the board of county canvassers.

Q. For the November 5, 1912, election?—A. Yes, sir.

Q. I ask you to turn to the office of Congressman for this district and read the number of votes that were returned in favor of each of the respective candidates by the State board of canvassers from these townships as I read them. Camden?—A. John M. C. Smith, 96; Claude S. Carney, 119; Edward N. Dingley, 218; total, 433.

Q. Township of Allen?—A. John M. C. Smith, 85; Claude S. Carney, 103; Levant L. Rogers, 1; Edward N. Dingley, 118; total, 307.

Q. Township of Wright?—A. John M. C. Smith, 83; Claude S. Carney, 200; Edward N. Dingley, 147; total, 430.

Q. Township of Woodbridge?—A. John M. C. Smith, 44; Claude S. Carney, 87; Levant L. Rogers, 3; Edward N. Dingley, 119; total, 253.

Q. Township of Cambria?—A. John M. C. Smith, 70; Claude S. Carney, 135; Levant L. Rogers, 1; Edward N. Dingley, 89; total, 295.

Q. Township of Moscow?—A. John M. C. Smith, 45; Claude S. Carney, 102; Levant L. Rogers, 3; Edward N. Dingley, 89; total, 239.

Q. Township of Scipio?—A. John M. C. Smith, 57; Claude S. Carney, 60; Edward N. Dingley, 69; total, 186.

Q. Township of Reading?—A. John M. C. Smith, 122; Claude S. Carney, 183; Levant L. Rogers, 4; Edward N. Dingley, 172; total, 481.

Q. Hillsdale Township?—A. John M. C. Smith, 26; Claude S. Carney, 31; Levant L. Rogers, 1; Edward N. Dingley, 54; total, 112.

Q. City of Hillsdale, first ward?—A. John M. C. Smith, 79; Claude S. Carney, 92; Levant L. Rogers, 7; Edward N. Dingley, 113; total, 291.

Q. City of Hillsdale, second ward?—A. John M. C. Smith, 82; Claude S. Carney, 93; Levant L. Rogers, 1; Edward N. Dingley, 110; total, 286.

Q. City of Hillsdale, fourth ward?—A. John M. C. Smith, 114; Claude S. Carney, 138; Levant L. Rogers, 7; Edward N. Dingley, 97; total, 346.

Q. These figures which you have read from the figures returned went in to make the totals returned to the secretary of state?—A. Yes, sir.

Recross examination by Mr. ADAMS:

Q. Adams Township?—A. John M. C. Smith, 107; Claude S. Carney, 102; Levant L. Rogers, 1; Edward N. Dingley, 137; total, 347.

Q. Amboy Township?—A. John M. C. Smith, 52; Claude S. Carney, 52; Edward N. Dingley, 106; total, 210.

Q. Township of Fayette?—A. John M. C. Smith, 147; Claude S. Carney, 131; Levant L. Rogers, 3; Edward N. Dingley, 133; total, 414.

Q. Jefferson Township?—A. John M. C. Smith, 106; Claude S. Carney, 86; Levant L. Rogers, 3; Edward N. Dingley, 149; total, 344.

Q. Township of Litchfield?—A. John M. C. Smith, 110; Claude S. Carney, 132; Levant L. Rogers, 3; Edward N. Dingley, 171; total, 416.

Q. Pittsford Township?—A. John M. C. Smith, 89; Claude S. Carney, 69; Levant L. Rogers, 3; Edward N. Dingley, 143; total, 304.

Q. Township of Manson?—A. John M. C. Smith, 84; Claude S. Carney, 60; Edward N. Dingley, 93; total, 237.

Q. Somerset Township?—A. John M. C. Smith, 67; Claude S. Carney, 106; Levant L. Rogers, 1; Edward N. Dingley, 95; total, 269.

Q. Wheatland Township?—A. John M. C. Smith, 102; Claude S. Carney, 54; Levant L. Rogers, 3; Edward N. Dingley, 77; total, 236.

Q. Third ward, city of Hillsdale?—A. John M. C. Smith, 82; Claude S. Carney, 93; Levant L. Rogers, 1; Edward N. Dingley, 110; total, 286.

Q. Are those all that you have read here out of the record of the board of county canvassers?—A. Yes, sir.

Q. For Mr. Fellows and myself?—A. Yes, sir.

Q. That was the final canvass of the board of county canvassers of Hillsdale County for the office for the various candidates for Representatives in Congress that were returned by the various election boards from all the townships, wards, and precincts in this county at that election?—A. Yes, sir.

Q. The final canvass of that vote?—A. Yes, sir.

Redirect examination by Mr. FELLOWS:

Q. I don't know whether your attention has been challenged to this statement of votes for the candidates for Congress in the statement of votes returned by the inspectors of election of the township of Hillsdale; if not, I will ask you to read into the record what it shows with reference to the vote received for the different candidates for Congressman in the third congressional district.—A. The whole number of votes given for said office of Congressman in the third congressional district was 112. They were given to the following-named persons:

John M. C. Smith, 26; Claude S. Carney, 31; Levant L. Rogers, 1; Edward N. Dingley, 54; total, 112.

Q. What is this paper which is returned with the election returns? It appears to be entitled "Inspectors' statement, 1912, township of Hillsdale, county of Hillsdale."—A. There are the papers that came from Lansing that was sent out there with the election supplies.

Q. The election supplies were sent to each township out of election supplies sent to you?—A. Yes, sir.

Q. I show you another paper appearing in this same township, which is entitled "Inspectors' statement"; that appears to be the return on the constitutional amendment; that was also sent out with the election supplies?—A. Yes, sir.

Q. Sometimes they are used and sometimes they are not?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial; if they had been used, they are the returns of the board just the same.

Q. These inspectors' statements are sometimes returned and sometimes not?—

A. They are not always returned to the clerk; no, sir.

Recross-examination by Mr. ADAMS:

Q. In this instance when I called your attention, when I was cross-examining you, what are they called—inspectors' what—in the instance where I called your attention to the inspectors' statement contained with some of the returns of some of the boards, especially those I have referred to as "Inspectors' statements," they were made out by the election boards and they were returned with the other returns of these election boards in this particular instance to the county clerk's office as a part of the returns, and came in the same envelope that the other returns came in?—A. Yes, sir.

Q. They were made out and signed by the election board in this instance to which your attention was especially called by me on cross-examination?—A. Yes, sir.

Q. And they are the original returns, too, were they not, in this particular instance?—A. Yes, sir.

Q. From those particular boards?—A. Yes, sir.

Q. Election boards?—A. Yes, sir.

Mr. FELLOWS. The statement which I showed you was also an original return—the statement book?—A. Yes, sir.

M. H. BLEECH, recalled for further cross-examination, testified as follows:

By Mr. ADAMS:

Q. Your name is M. H. Bleech?—A. Yes, sir.

Q. You were one of the clerks of the election board in the township of Moscow on November 5, 1912?—A. Yes, sir.

Q. The envelope which contained the returns from your election board that was sent here to the county clerk it is claimed that the seals were broken when it arrived at the county clerk's office. Will you take the poll book, the tally sheet book, and the statement book which were contained in that envelope and tell me whether there is anything in those books that has been changed, that you can find, from what the books were when they were signed up by the election board?—A. The poll book is just the same.

Q. There has been no change in that since it left your board, has there?—A. No, sir; the tally-sheet book is the same.

Q. The tally-sheet book is just the same, is it?—A. As far as I can see it is. There is a change there——

Q. Are there any changes in there from what the condition was when they left your board?—A. I don't see any.

Q. Do you see any in the statement book?—A. No, sir.

FRANK FAST, recalled for further cross-examination, testified as follows:

By Mr. ADAMS:

Q. Mr. Fast, you were on your election board from Camden Township, November 5, 1912, were you not?—A. Yes, sir.

Q. It is claimed that the envelope containing the poll book, tally-sheet book, and statement book sent up to the county clerk's office was unsealed, that the seals were broken. I wish you would examine those three books, the poll book, tally-sheet book, and statement book, the returns from the township of Camden as made by the election board that conducted the election of November 5, 1912, and tell me whether there have been any changes made in those books in any particular that you can find, or in any one of those books since they left the hands of your election board after that November 5, 1912, election was concluded?—A. There are no changes that I can see only the marks of errors.

Q. Do you find any changes, after examining these books, are they any different from what they were when they left the hands of your election board November 5, 1912, or when your board got through with its duties in connection with the November 5, 1912, election?—A. Yes, sir.

Q. Do you find any changes in the poll book of that township of Camden made since that book left your election board after their work, November 5, 1912?—A. Not that I can notice.

Q. Now, referring to the statement book, do you find any changes in that statement book; if so what are they? That is, in the figures, corrections made in there, that you find?—A. There is a correction in lead pencil of the votes cast for secretary of state.

Q. Read the correction?—A. They changed the total from 433 to 438.

Q. Any other change?—A. No, sir; not in any of the other officers. Here is a change in the number of votes given for coroner, I. A. Bates, from 222 to 212.

Q. It simply says after the 222 "error" and 213, does it not?—A. Yes, sir.

Q. Are there any other corrections in that statement book?—A. No, sir.

Q. Do you find any changes in any of those books as far as the candidates for Representative in Congress for the third congressional district are concerned?—A. No, sir.

Q. Now, did you see the envelopes after these returns were sealed up?—A. Well, I think I helped seal them.

Q. Did you see this envelope which contained the returns of that election board of the November 5, 1912, election addressed to county clerk, Hillsdale?—A. Yes, sir.

Q. When the returns were put in there by your election board what did you in the way of sealing them up?—A. We sealed them with wax.

Q. You had been furnished some sealing wax, I take it, by the county clerk of this county to seal up your returns when you got ready to send them forward to the county clerk?—A. Yes, sir.

Q. When you sealed them up in this envelope, did you seal that flap down onto the main part of the envelope with sealing wax that was furnished you by the county clerk?—A. Yes, sir.

Q. Was the package securely sealed when it left the hands of the board?—A. Yes, sir.

Q. That sealing wax is brittle, is it not?—A. Yes, sir.

Q. And breaks very easily?—A. Yes, sir.

KAY SMITH, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Smith, where do you reside?—A. A mile and a half west of Cambria.

Q. How long have you lived in the township of Cambria?—A. I have lived there 33 years.

Q. You lived there on election day, November 5, 1912, last?—A. Yes, sir.

Q. Did you have anything to do with the conduct of that election?—A. Yes, sir.

Q. In what position did you serve on the election board?—A. I was one of the clerks.

Q. Did the board take a noon recess?—A. Yes, sir.

Q. A noon adjournment?—A. Yes, sir.

Q. What was done with reference to sealing the box; was the box sealed—the ballot box—a strip of cloth put over it and some sealing wax put on it?—A. I couldn't say; I don't think there was.

Q. Where was the election held?—A. It was in Mr. Round's building on the corner.

Q. And the box was left there during the time you took a recess for dinner?—A. Yes, sir.

Q. Was there anyone left with it?—A. I think not.

Q. The door was locked?—A. Yes, sir.

Q. Did you have the key to the door?—A. No, sir.

Q. Do you remember who had the key to the box?—A. Mr. Fink.

Q. Did he also have the key to the door? Who had the key to the door?—A. Mr. Fink.

Q. After the polls were closed to canvass the votes, did anyone assist in the counting of the votes except the regular inspectors of the election?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial under the answer; there is no allegation of any such a circumstance set forth in the answer, and the proof can not be admitted.

(Last question read.)

A. I think not.

Q. Did a man named Payne assist in counting the votes?—A. No, sir.

Q. Did he assist in checking?—A. Yes, sir.

Q. Was he sworn in as an inspector or clerk?—A. I think not.

Q. Did he remain with the board and assist in checking until the canvass was completed?—A. Yes, sir.

Q. Did he commence with the beginning of the canvass?—A. No, sir.

Q. How long after the canvass had commenced did he begin?—A. Well, now, I couldn't say; we checked awhile, then he began.

Q. It was quite a hard election. Did he take your place?—A. I think he took the other clerk's place first.

Q. Then, did you quit and rest up and he take your place?—A. Yes, sir.

Q. Did he change off with the other clerk and with you?—A. Yes, sir.

Q. I don't understand that he had anything to do with handling the ballots, only checking the votes?—A. That is all.

Q. That is correct?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. What Mr. Payne was this?—A. W. D. Payne.

Q. What was his business?—A. He has been working in a hardware store there.

Q. Been clerk in a hardware store there?—A. Yes, sir.

Q. He was a Republican in November, 1912, was he?—A. Yes, sir.

Q. You were a Republican at that time?—A. Yes, sir.

Q. Now, when did Mr. Payne begin to do anything in the way of tallying?—A. Well, now, I think about 9 o'clock.

Q. You mean at night?—A. Yes, sir.

Q. On the night of November 5, 1912?—A. Yes, sir.

Q. Do you say he took your place at any time in tallying?—A. He first took the other clerk's place.

Q. Who was the other clerk?—A. Andrew Fink—A. D. Fink.

Q. He first took his place?—A. Yes, sir.

Q. This Payne, the first place he took was A. D. Fink?—A. Yes, sir.

Q. Then, later on did Payne take your place?—A. Yes, sir.

Q. When Payne took your place did Fink go back to tallying?—A. Yes, sir.

Q. So that when Payne was tallying, either you or Fink were tallying at the same time?—A. Yes, sir.

Q. How long did Payne take your place tallying on that board?—A. I couldn't say, probably an hour or such a matter.

Q. How long did he tally for Fink?—A. About the same length of time, I think.

Q. When Payne tallied for you where were you? What did you do?—A. I was in the building.

Q. Right around there looking on?—A. Yes, sir.

Q. And saw what was going on?—A. Yes, sir.

Q. When Payne tallied for Fink, was Fink around there?—A. Yes, sir.

Q. What was he doing, looking on?—A. Yes, sir.

Q. You and Fink each had a tally-sheet book?—A. Yes, sir.

Q. You kept your tallies on the book you started in with; and you used that book as far as you tallied on that election board, did you?—A. Yes, sir.

Q. And Fink also had a tally book like yours? He used that for all the tallying he did on that election board that day?—A. I think he did.

Q. When Payne was tallying for you he tallied on your book?—A. Yes, sir.

Q. When you began tallying again you went back on the same book you had tallied on?—A. Yes, sir.

Q. And tallied the balance of the time on that same book?—A. Yes, sir.

Q. That was true of Mr. Fink, when he replaced Mr. Payne. Mr. Fink tallied on the same book he had been using before Payne tallied?—A. I think he did; yes, sir.

Q. When you got through that day did your count on your tally book and Fink's tally book agree?—A. Yes, sir.

Q. You say at noon you took a recess?—A. Yes, sir.

Q. All of the officers of the election board went somewhere, I take it, to get something to eat?—A. Yes, sir.

Q. I suppose the election board got hungry as well as other folks?—A. Yes, sir.

Q. This election was held, did you say, in some hall?—A. Round's building, that used to be used for a store building.

Q. On the first floor?—A. Yes, sir.

Q. About how large was that room?—A. I should say probably 20 by 40, something like that.

Q. Did you have the whole room?—A. Yes, sir; all but a little; there were some implements in the back part.

Q. When you went to dinner at noon the ballot box was locked, and had been locked from the time you commenced taking votes in, hadn't it?—A. Yes, sir.

Q. You do not know whether one of the inspectors sealed the hole through which the ballots were put just before you went to your noon lunch that day?—A. I couldn't say for sure.

Q. But the door was locked when you went out at noon?—A. Yes, sir.

Q. Nobody left in there?—A. No, sir.

Q. Did anybody go in there and disturb any of your election records, returns, or ballot box, or books, or anything you had there that you used for that election; they could not unless they broke in or got the key and unlocked the door, could they?—A. No, sir.

Q. When you got back after lunch you found everything just as you left it when you went to lunch, did you?—A. Yes, sir.

Q. You did not find that anybody had disturbed or took anything, or been in there while you gentlemen were at your lunch?—A. No, sir; everything was all right.

Q. There was nothing in any way to make you suspicious that anybody had in anyway tampered in anyway with any part of your election paraphernalia you had while you were at your noon lunch, was there?—A. No, sir.

Q. Now, I want to call your attention to the poll book from that township of Cambria of the general election held November 5, 1912. Henry Fink, I see, signed that certificate; he was one of the members of the board that day, was he?—A. Yes, sir.

Q. C. A. Peters was one of the members of the board?—A. Yes, sir.

Q. He also signed the certificate?—A. Yes, sir.

Q. And J. W. Lande?—A. Yes, sir.

Q. He was also a member of the election board that day?—A. Yes, sir.

Q. Now, you just please start in and read what there is on that page there, beginning with the adjournment of the polls.—A. The polls of this election were adjourned at 12 o'clock noon for one hour. Previous to such adjournment the clerks of this election compared their respective lists of the persons voting and made them to correspond each with the other. The ballot box A was then opened and a list of the persons were placed therein, the ballot box used at this election being carefully locked and sealed in accordance with the provisions of the law and delivered to one of the inspectors of this election and the keys to another inspector of the election and the seal to the third inspector, as required by law. The polls of this election were opened at 1 o'clock p. m., after said ballot box had been publicly exhibited at least five minutes previous to breaking the seal thereon.

Q. Give us the whole of it.—A. At 4 o'clock, at 4.30, and 4.45 o'clock p. m. a proclamation was made that at the expiration of 1 hour, 30 minutes, and 15 minutes, respectively, the polls of said election were closed at 5 o'clock p. m.

" CERTIFICATE.

" We, the undersigned, do hereby certify that we have carefully enumerated the number of persons having voted as entered upon and shown by the foregoing poll list and that the total number of such persons is 305. And we do hereby certify that the foregoing poll list has been carefully compared with the duplicate poll list as required by law, and that all mistakes found in such poll lists have been duly corrected by us, and that both of said poll lists are now correct and agree each with the other.

" We, the undersigned board of election inspectors, do further hereby certify that herein is given a true and complete record of the proceedings of this board of election inspectors. In witness whereof we have hereunto set our hands at the place of holding said election in the township of Cambria, precinct No. 1, county of Hillsdale, State of Michigan, this 5th day of November, A. D. 1912.

" HENRY FINK.

" J. W. LANDE,

" C. A. PETERS.

" *Election Inspectors Precinct No. 1, Township of Cambria,
County of Hillsdale, State of Michigan.*"

Redirect examination by Mr. FELLOWS:

Q. This certificate you just read is a printed certificate with just a few blanks in it?—A. Yes, sir.

Q. Down to the words "close of the polls at 4 o'clock, at 4.30 o'clock, and at 4.45 o'clock p. m., etc. ; the certificate is just a printed form?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. The names are signed in ink to that certificate?—A. Yes, sir.

W. D. PAYNE, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee as follows:

Direct examination by Mr. FELLOWS:

Q. I never had an opportunity to talk with you, but you are a resident of Cambria Township?—A. Yes, sir.

Q. How long have you lived there?—A. Thirty-three years.

Q. Do you live in the village?—A. Yes, sir.

Q. Do you remember the occasion of there being an election last November 5?—A. Yes, sir.

Q. Were you in Cambria that day?—A. Yes, sir.

Q. And voted?—A. Yes, sir.

Q. After the polls were closed did you assist in tallying the votes?—A. Yes, sir.

Q. Whose place did you take?—A. Mr. Fink's.

Q. He was the township clerk?—A. Yes, sir.

Q. About what time in the evening was it you took his place?—A. I should judge about 9 o'clock, about; I just came out of the store; I think about 9 o'clock.

Q. You were not sworn before you commenced tallying?—A. No, sir.

Q. And had not been sworn to attend and act as clerk or inspector up to that time?—A. No, sir.

Q. Now, you tallied for Mr. Fink and in his place for about how long?—A. I should judge an hour.

Q. Did you tally for anybody else?—A. Yes, sir.

Q. Who?—A. Mr. Smith.

Q. He was the other clerk of the election?—A. Yes, sir.

Q. How long do you think you tallied for him?—A. Well, of course, I don't know and can't call to mind off hand. I should say I worked an hour for Mr. Fink and was off an hour, then took Mr. Smith's place possibly an hour; I will not say.

Q. Were you there when they were finally through?—A. Yes, sir.

Q. You were not asked to and did not sign the returns as clerk?—A. No, sir.

Q. When you took Mr. Fink's place you used his book?—A. Yes, sir.

Q. And when you took Mr. Smith's place you used his book?—A. Yes, sir.

Q. Who read the ballots?—A. Mr. Henry Fink, Mr. Lande, and Mr. Rogers.

Q. Three inspectors instead of two?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. I suppose, Mr. Payne, that when you were keeping those tallies you tried to keep them honestly, correctly, and fairly?—A. Yes, sir.

Q. You didn't put down any tallies at any time while you were tallying there on that board, did you, for any person that was not called off to you?—A. No, sir.

Q. I suppose when you tallied that you and the other tally clerk in some way called off to each other, didn't you?—A. Yes, sir.

Q. What did you do; tell us what you did?—A. To be sure, first one would call then the other, and, say, Carney had a vote, we would say "one" for Carney, and if on the next ticket he got one we would say "two," and so on until we got five, then we always called "check."

Q. You drew a mark across the four tallies?—A. Yes, sir.

Q. It was tallied in that way?—A. Yes, sir.

Q. When you were tallying you called off that way, and did the other clerk do the same thing?—A. Well, maybe one man would call down through one ticket, and, if a big ticket, maybe the other man would. We did it to be sure they were right.

Q. Then, if there was any mistake, you corrected it?—A. Occasionally a man would misspeak, and if he did the other man caught him.

Q. Then, if you made a mistake, the other one called, and if you found it put down wrong you would change it?—A. So they would agree.

Q. You tried fairly and honestly to record these votes just as they were called by the man or men reading the ballots?—A. Yes, sir.

Q. For every candidate?—A. Yes, sir.

Q. For the different candidates voted for at that election for Representatives in Congress—did you try to put down honestly and fairly and correctly the ballots as they were called off for the person or persons that were called off for by the men reading from the ballots?—A. Yes, sir.

JAY CAMPBELL, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. FELLOWS:

Q. Your home is where?—A. Reading, Hillsdale County.

Q. You live in the village?—A. Yes, sir.

Q. Now, that village is in the township of Reading?—A. Yes, sir.

Q. Do you recollect the circumstance of the election November 5 last?—A. Yes, sir.

Q. Were you an officer on that board?—A. Yes, sir.

Q. What position did you fill in the township?—A. I was leading ballots.

Q. Who else was on the board that day as inspectors?—A. Mr. Galloway and Mr. Northrup.

Q. How large a place is Reading village?—A. Ten or twelve hundred.

Q. Did you have quite a large vote there?—A. Yes, sir.

Q. Did your board take any recess at noon?—A. No, sir.

Q. Do you know how many votes were cast without referring to the record?—A. I don't know that I do; four hundred and something.

Q. Four hundred and ninety-one; is that your recollection?—A. Yes, sir.

Q. Now, did your ballot box in that ward become filled up so you had to get another box?—A. Yes, sir.

Q. About what time of day was that?—A. I couldn't remember; I think it was afternoon, though.

Q. What did you do to take care of the situation?—A. We had another box brought, a wooden box, nailed up, with a slot cut into the top.

Q. Was there any lock on that box?—A. No, sir.

Q. You had a separate box for the amendments?—A. Yes, sir.

Q. This box I am calling your attention to was a box in which the ballots for candidates were cast?—A. Yes, sir.

Q. After the election was over how did you get into that box that had no lock on it for the purpose of getting the votes out?—A. We pried the cover off.

Q. The cover was nailed down?—A. Yes, sir.

Q. Was there any lock put on it after the votes were counted?—A. No, sir.

Q. Were there any electors to whom their votes were delivered by the members of the board at any other place than within the railing?—A. Yes, sir.

Mr. ADAMS. I object to that and move to strike out the answer for the reason that there is no allegation in the answer of the contestee and that it is irrelevant, immaterial, and inadmissible.

Q. Go ahead and tell the circumstances of that.—A. Well, our election took place on the second floor.

Q. In the town hall?—A. Yes, sir; in the village hall. They could not get up there, and they had spoken to some one and asked if there was not some way they could vote.

Q. So that question came up before the board?—A. Yes, sir; and they agreed, all the challengers did, and there was no objection made whatever.

Q. After that had been determined by the board what was done with reference to providing them with ballots?—A. The two challengers went down and myself and Mr. Northrup, I think, and I took the ballots with me, three in number, and they were on the sidewalk at the foot of the stairs, and they voted there, and their ballots were folded up and handed to the clerk.

Q. What did he do with them?—A. He put them in the ballot box or handed them to the chairman.

Q. Took them back upstairs?—A. Yes, sir.

Q. And put them in the ballot box?—A. Yes, sir; I remember they were put in the ballot box.

Q. Were there any other votes cast there that the votes were challenged because they were not registered?—A. I think there was early in the morning.

Q. Were there any votes cast by men who were not registered there?

Mr. ADAMS. I object to that as irrelevant, immaterial, and inadmissible under the answer in this case. In the morning one or two came in. I think two, and the challengers objected. Their names were not there, but they supposed they were registered, but come to find out they had registered in the village registration, and they supposed that was all that was necessary; and I think, if I remember right, they were sworn in, two of those votes.

Q. They had registered at the village election and supposed they were registered at this election, but were not?—A. Yes, sir; they supposed that was all that was necessary.

Q. They swore they were electors in the township and were permitted to vote?—A. Yes, sir.

Q. How many do you think there were of them?—A. I think two, if I remember right.

Q. Now, after the polls were closed and you were unfolding and sorting out the ballots and putting them in different piles, did anybody except the inspectors of election assist about that?—A. No, sir.

Q. Did anyone help unfold and sort the ballots?—A. Well now, possibly. I am not sure about that. Possibly the gate keeper might have helped unfold them. I am not sure about that.

Q. Isn't it your recollection that one of the gatekeepers did do that?—A. I am not real sure about that. He may have done so.

Mr. ADAMS. I move to strike out what might have been done as a conclusion and incompetent.

A. Well, it is possible one did.

Mr. ADAMS. I move to strike out the answer.

A. I will not swear to it.

Q. Would that be your best recollection?—A. Yes, sir.

Mr. ADAMS. I object to that as leading.

Q. Do you remember which one of the gatekeepers it was?—A. No, sir; I do not.

Cross-examination by Mr. ADAMS:

Q. You were what on that board?—A. During the election I delivered the ballots.

Q. What was your position on the board?—A. I was justice of the peace.

Q. You were not acting as justice of the peace exactly on the election board, were you? What were you acting as?—A. I was acting as one of the electors.

Q. You are sure about that?—A. Why, yes.

Q. You were not acting as an elector, were you?—A. Yes, sir.

Q. You were?—A. Yes, sir.

Q. Weren't you acting as an inspector?—A. Well, an inspector.

Q. Are they one and the same thing—an inspector and an elector?—A. Yes, sir.

Q. How long have you been a justice of the peace down there?—A. About seven years.

Q. And you don't think there is any difference between an elector and an inspector, do you?—A. Yes, sir.

Q. Well, What is it?—A. Well——

Mr. FELLOWS. I object to it as immaterial.

WITNESS. Well, now, I can't define it.

Q. Can you tell us what an elector is?—A. I suppose an elector is one that is on the board.

Q. What is an inspector?—A. He is an inspector.

Q. One that is not on the board?—A. No, sir.

Q. What is an inspector?—A. One that is on the board.

Q. What is the difference between an elector on the board and an inspector on the board?—A. I told you I didn't think I could explain the difference.

Q. Well, you were one of the fellows there who—you were not clerk?—A. No, sir.

Q. You were not a gatekeeper?—A. No, sir.

Q. Neither of those two?—A. No, sir.

Q. What did you do?—A. I leaded the ballots.

Q. Put the initials on the ballots?—A. Yes, sir.

Q. You were a Republican, were you not, at that time?—A. Supposed to be.

Q. And have been about all your life?—A. Yes, sir.

- Q. And are now?—A. Yes, sir.
- Q. Mr. Galloway was a member of that board, wasn't he?—A. Yes, sir.
- Q. Ed. R. Galloway was one of the inspectors?—A. Yes, sir.
- Q. He was a Republican?—A. Yes, sir; I guess so.
- Q. You have always known him and understood him to be a Republican?—A. Yes, sir.
- Q. He was elected as such on the Republican ticket as justice of the peace in that township?—A. Yes, sir.
- Q. And Mr. Northrup was an inspector there?—A. Yes, sir.
- Q. He was what; a justice of the peace?—A. Yes, sir.
- Q. He was elected justice of the peace?—A. Yes, sir.
- Q. He acted on that board?—A. Yes, sir.
- Q. Mr. Galloway was what; supervisor?—A. Yes, sir.
- Q. Republican supervisor from Reading Township?—A. Yes, sir.
- Q. He was the Republican supervisor from that township at the very time that that November 5, 1912, election was held?—A. Yes, sir.
- Q. He was chairman of the board?—A. Yes, sir.
- Q. Now, you stated that the ballot box got filled up?—A. Yes, sir.
- Q. Had a very large vote there that day?—A. Yes, sir; larger than usual.
- Q. The ballots were very large, too, weren't they?—A. Quite large; yes, sir.
- Q. Larger than usual?—A. Yes, sir.
- Q. Your regular ballot box that you had for taking in the votes at that election in that township was not large enough to hold them all?—A. No, sir.
- Q. Now, about what time in the day did you begin to use the other box?—A. Now, I can't remember just what time; I think along in the afternoon; after dinner.
- Q. How long before the polls closed?—A. It must have been three hours or better.
- Q. Do you know how many hours it was before the polls closed?—A. No, sir; I do not.
- Q. Why do you say three hours before if you don't know?—A. I don't know exactly.
- Q. Why do you say three hours before if you don't know how long before the polls closed that you began using that box to put the ballots in; can you answer that?—A. I have answered it as correctly as I can.
- Q. Have you answered it all you can answer it?—A. Yes, sir. I can't remember just how long it was.
- Q. You got a store box, did you?—A. Yes, sir; I think it was a boot box, if I remember right.
- Q. A good substantial box?—A. Yes, sir.
- Q. A wooden box?—A. Yes, sir.
- Q. You nailed the cover down on it tight, did you?—A. Yes, sir.
- Q. And cut a slot in to put the ballots through?—A. Yes, sir.
- Q. It was nailed down pretty strong, was it not—substantial?—A. Yes, sir.
- Q. You nailed it down so it would be very hard for anybody to get in there without breaking the lid, didn't you?—A. They would have to pry the lid up.
- Q. I say you nailed it down so tight it would have been difficult for anybody to pry the lid off without breaking it?—A. Yes, sir.
- Q. Then you put some ballots in it?—A. Yes, sir.
- Q. Your board did not go away from there that day, did it?—A. No, sir.
- Q. It stayed there from the time the election was commenced in the morning until the votes were counted that were cast there that day, including those you put in the store box and until the returns were made out, your board stayed right there and did its work and completed the returns?—A. Well, now, I can't remember whether the whole board came to supper or not; there was some of them stayed there.
- Q. Some of the board, anyway, stayed there?—A. Yes, sir.
- Q. I suppose possibly one went out at a time and got his supper, or something of that kind?—A. Well, two or three, maybe; I couldn't tell that.
- Q. You don't remember about that?—A. No, sir; I know part of them stayed and part of them went and got their suppers.
- Q. Stayed right there with the ballot box, tickets, etc., and looked after them?—A. Yes, sir.
- Q. And saw they were taken care of?—A. Yes, sir.
- Q. There was nothing irregular occurred, the vote was not in any way affected, that you know of, by the use of that box and putting those ballots in it, was it?—A. No, sir.

Q. In the morning, was it, when you say you went downstairs to receive ballots from some voters?—A. No, sir; I don't think it was in the morning.

Q. When was it?—A. I think in the afternoon.

Q. You think in the afternoon?—A. Yes, sir.

Q. You had some discussion about going downstairs and getting those votes, didn't you?—A. No discussion at all until the question came up.

Q. There was some discussion then. Of course, the question came up, and when it came up there was some discussion, was there not?—A. Yes, sir.

Q. Who brought the question up?—A. I think the chairman brought it up first.

Q. Who was there when it was brought up besides the members of the board?—A. Oh, there was—inside of the railing?

Q. In the room outside of the railing; do you remember?—A. I couldn't tell you.

Q. Was the postmaster there, Mr. Kirby?—A. I know him.

Q. He was the postmaster there at that time?—A. Yes, sir.

Q. He came in, didn't he, to your board where you were holding that election and suggested that the votes of those men be obtained who were not able to come upstairs and vote; that was the first way the thing came up, was it not?—A. Well, now, you say Mr. Kirby; I couldn't say whether he came up there or not; I stated the first I knew of it our chairman told us.

Q. Mr. Corbett was the postmaster, instead of Mr. Kirby. Did you see him there while the matter was under discussion?—A. I couldn't tell you whether I did or not.

Q. Can you say you did not?—A. No, sir; I couldn't say whether I did or not.

Q. Do you know whether he was there about that time or whether he was not there?—A. I couldn't tell you.

Q. You can't tell?—A. No, sir.

Q. Who did come and request the board to do that?—A. The chairman, I guess, of the board.

Q. Who came there and requested the chairman or made any request of any member of your board that the votes of those men be received in that manner?—A. Well, now, you ask that question, and you want me to state who the person was?

Q. Yes; if you know.—A. Now, all I know about that is what I heard.

Q. Were you not there?—A. Yes, sir.

Q. Don't you know who came up and requested the board to do it?—A. No, sir.

Q. You are sure about that, now?—A. All I know about that is what was stated after that.

Q. You have no recollection on that point? To refresh your recollection, I will ask you if you do not recollect that the postmaster was up there and suggested to some member of your board, as far as those votes were concerned, that they be received down on the sidewalk?—A. There were three of them.

Q. There were but two suggested there, were there? In the first place, there were but two men that it was suggested that you go down, or somebody go down, and get the votes of?—A. That may be so.

Q. Isn't that true; isn't that your recollection of it now?—A. Well, now, I will not say whether there was one or two men first or not.

Q. Isn't it a fact that there were just two men that it was proposed to some officer of that election board that they go down and get their votes, downstairs, on that day when the matter first came up before your election board?—A. I would not be surprised; still I would not want to swear to that now.

Q. Don't you know that is so?—A. No, sir; I do not. That is my recollection of it.

Q. Two, at first; that is your recollection of it now?—Yes, sir.

Q. Those two men suggested were both Republicans?—A. No, sir.

Q. As you supposed, you supposed they were both Republicans, didn't you?—A. No, sir; I did not.

Q. One was a Republican?—A. Well, yes; I didn't see his ticket, though.

Q. One was a Republican and you supposed the other man was a Republican when it was proposed that you go downstairs and take his vote?—A. I didn't propose it.

Q. One of those two men was a Republican?—A. Yes, sir.

Q. The other man supposed, at that time when this was proposed, to be a Republican?—A. No, sir.

Q. Who was the other one?—A. Andrew Riser.

Q. Who was the Republican?—A. William H. Hill.

Q. What was the other's name?—A. Andrew Riser.

Q. He turned out to be a Prohibitionist?—A. He had been, I suppose, for a good many years.

Q. He was a Prohibitionist, was he?—A. It was supposed he was.

Q. Now, then, you went downstairs, didn't you?—A. Yes, sir.

Q. When you went downstairs you supposed you were going down there to get the votes of two men, didn't you; of two different men?—A. Yes, sir.

Q. After you got down there the third man came along and voted?—A. Yes, sir; I think he came there, if I remember right, before we got through with the two.

Q. I think you have got that straight now. You did not contemplate the third man when you went downstairs to get the votes of the two?—A. No, sir; I think that is right.

Q. You finally got the votes of the three men?—A. Yes, sir.

Q. One was a Republican and one, as you understood it, was a Prohibitionist, and the other one was what—a Democrat?—A. You bet, he was.

Q. He was the fellow you didn't have in mind when you went downstairs to get those votes?—A. I didn't have in mind anyone.

Q. That Democrat's name was not suggested when you were upstairs, before you went down to get those two votes?—A. I couldn't say as to that.

Q. He was the last man you got, wasn't he—the Democrat downstairs?—A. Do you mean to say I would not have went down?

Q. I want you to answer my question.—A. I will if I can.

Q. The Democrat vote there downstairs on that occasion was the last man to vote, wasn't he?—A. I think he was; yes, sir.

Q. Do you swear now that the postmaster did not come up there and suggest that you go downstairs and get the vote of that Republican and that Prohibitionist?—A. No, sir; I will not say whether he did or not.

Q. You took the ballots from those three men and took them upstairs and put them in the box?—A. Yes, sir.

Q. Do you know on that day that Edgar G. Dowd, who was one of the—you testified this morning that two men came there and some objection was made to their voting, did you?—A. I think the challengers did not find their names on the book, and they objected to their voting.

Q. You testified, did you, that two men came in there in the morning to vote and some objection was made by some one to those two men voting?—A. Yes, sir.

Q. Who were they?—A. I couldn't tell you.

Q. Didn't you hear the objection made to them?—A. Who made the objection?

Q. Who were the men who wanted to vote?—A. I couldn't tell you now who they were.

Q. Can't you give us the name of one of them?—A. No; I couldn't say.

Q. You knew them at the time, didn't you?—A. I think I did; yes, sir.

Q. They were both Republicans, were they not?—A. I don't know anything about that.

Q. You don't?—A. No, sir; I told you—

Q. I don't want you to tell me anything except what I ask you?—A. All right; go ahead.

Q. I want to know whether you didn't know at the time those two men came there that day and wanted to vote what their names were.—A. At the time?

Q. Yes, sir.—A. Well, I will tell you; I can't remember now whether I did or not.

Q. You don't remember now whether you knew them or not?—A. No, sir.

Q. Can you give us the name of either of them?—A. No, sir.

Q. You can't tell us who they were or how they looked?—A. No.

Q. Can't you tell us where either of them lived?—A. In town there.

Q. Where?—A. I don't know.

Q. If you don't know who they were, how do you know where they lived in town—you can't now recollect who they were, how can you tell they lived in town?—A. They swore to it.

Q. Is that the only reason you have for saying they lived in town?—A. Well, yes; that is the only sure reason that I can remember of now.

Q. You don't know, as a matter of fact, whether either one of those men voted there that day or not?—A. Yes, sir; I do.

- Q. Did they vote?—A. Yes, sir.
- Q. Take this poll list and find their names on there, will you?—A. No, sir.
- Q. Why not?—A. How will I find them? I didn't set their names down.
- Q. You don't remember either of them?—A. I couldn't tell you.
- Q. Have you seen them since that election?—A. I presume I have.
- Q. Who were they, if you saw them since election?—A. How many times shall I answer that question?
- Q. Answer that one.—A. I can't answer it.
- Q. Did either of those men vote at that election? If you were in there when they voted—their votes were challenged?—A. Yes, sir.
- Q. Who took their votes?—A. The chairman.
- Q. Who?—A. Mr. Galloway was chairman.
- Q. Galloway took both votes?—A. Yes, sir.
- Q. Who challenged the votes of either of them?—A. Why—
- Q. I want to know who challenged those two votes, or either of them?—A. They had the poll book in front of them—I can't tell you.
- Q. I want to get down to business. Who challenged either of those two men?—A. I couldn't tell you.
- Q. I show you the poll book of that election down there that day, and you find, don't you, a blank form where votes that are challenged to be filled out, don't you?—A. Yes, sir; a whole lot of them there.
- Q. There are 13 blank forms on that poll book that that election board had there that day to fill out in case votes were challenged, are there not?—A. Yes, sir.
- Q. Not one of them is filled out, is there?—A. I don't see that they are in this book.
- Q. Look and see whether this is the poll book you used that day?—A. Yes, sir.
- Q. It is?—A. Yes, sir.
- Q. Those men were sworn in, were they—an oath was administered to them before you allowed them to vote?—A. Yes, sir.
- Q. There is no record of it at all?—A. I don't see any.
- Q. Did you mark those votes as challenged votes, or were they marked as challenged votes?—A. I think they were.
- Q. Don't you know they were not marked as challenged votes at all?—A. No, sir; I don't know.
- Q. Is it not a fact that neither of them were marked as challenged votes?—A. I couldn't tell you.
- Q. Those are the only two men who came in there that day that were challenged?—A. No, sir; I think not. I think there were one or two after those came in.
- Q. Who were they?—A. I couldn't tell you who they are now.
- Q. You can't remember that?—A. No, sir.
- Q. Your recollection is not very good on that point?—A. No, sir; it is not very good anyway.
- Q. I can't refresh it any on that point, can I?—A. No, sir.
- Q. Now, do you know Clare Fitzsimmons?—A. Yes, sir.
- Q. Did he come in there that day and want to vote?—A. Yes, sir.
- Q. Did he vote?—A. No, sir.
- Q. Was he a Democrat?—A. I don't know.
- Q. Don't you know he was a Democrat?—A. No, sir; I don't know how he was going to vote.
- Q. Don't you know he was a son of the chairman of the Democratic county committee of Hillsdale County?—A. Not sure; no, I don't know he was a Democrat.
- Q. Do you know that?—A. Yes, sir.
- Q. You knew that on the 5th day of November, 1912, when he came in there to vote, didn't you? You knew that—that he was a son of Mr. Fitzsimmons, who was then chairman of the Democratic committee of this county?—A. Yes, sir.
- Q. The board didn't allow him to vote, and he wanted to vote, didn't he?—A. Yes, sir.
- Q. Your board did not allow him to vote?—A. I said no.
- Q. Mr. Corbett, the postmaster up there, was he more or less during the day in the room upstairs?—A. I couldn't say that he was any more than anyone else.

- Q. Did you see him up there?—A. I saw him up there, I think, once or twice.
 Q. What was he doing?—A. He was not doing anything.
 Q. Did he vote?—A. I think he did.
 Q. You are sure about that, or don't you know?—A. Well, I think he did.
 Q. Do you know?—A. I will not swear to it. I had all I could do to lead the ballots there that day.
 Q. Did you deliver the ballots to those two men who were challenged?—A. No, sir.
 Q. You are sure about that?—A. Yes, sir.
 Q. Isn't it a fact that you did deliver the ballots to both of those men who were challenged?—A. No, sir.
 Q. You swear positively that you did not deliver the ballots that were voted by either of those two men who were challenged that finally cast their ballots there?—A. Yes, sir.
 Q. You say you did not—either of them?—A. I didn't either one of them.

Redirect examination by Mr. FELLOWS:

- Q. Did Fitzimmons offer to take an oath there that he was sick or unable to be present and register, or anything of that kind?—A. Why, no; no.
 Q. You spoke in answer to Judge Adams's question about the members of the board going out to supper?—A. Yes, sir.
 Q. When the other members went out to supper did you and the others who remained keep looking after the voting?—A. If we closed?
 Q. You kept counting the votes while they were gone?—A. Yes; getting them ready to count.
 Q. While you were—when the others came back did you find that they had gone ahead counting?—A. No, sir; they had not.
 Q. You did not start your count until you were all present?—A. No, sir.

Whereupon the hearing was adjourned until 9 o'clock a. m., Tuesday, April 15, 1913.

TUESDAY, APRIL 15, 1913—9 a. m.

JESSE BARBER, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. FELLOWS:

- Q. Mr. Barber, where is your home?—A. In Morgan.
 Q. That is in what township in this county?—A. Wright.
 Q. Did you hold any office in the township of Wright on the 5th day of November last?—A. Yes, sir.
 Q. What?—A. Justice of the peace.
 Q. As such justice of the peace did you serve on the board?—A. Yes, sir.
 Q. Where was the election held?—A. In Platville.
 Q. You alternate in that township between Waldron and Platville in holding the election—first in Platville and then in Waldron?—A. Yes, sir.
 Q. One year in one place and the next year in the other? The practice is to hold one election in Platville and the next in Waldron?—A. That is the way we do; yes, sir.
 Q. You sat on the election board in Platville?—A. Yes, sir.
 Q. At the noon hour did you have any adjournment?—A. Yes, sir; we did.
 Q. For the purpose of going to dinner?—A. Yes, sir.
 Q. What was done with the ballot box?—A. It was sealed up.
 Q. Was the seal given to one member of the board, the key to another, and the box to another or was the box left there?—A. The box was left right there, and the gatekeeper stayed there.
 Q. The hall was not locked?—A. I don't think it was.
 Q. You were the one who took the seal?—A. No, sir.
 Q. What did you have?—A. I saw just it was locked; that is all.
 Q. You didn't have the keys or the seal?—A. No, sir; the clerk had the keys.
 Q. Did the clerk have the seal, too?—A. I think Mr. Gleason had the seal.
 Q. How long was it adjourned for?—A. One hour; but we didn't stay an hour before we were back.
 Q. And commenced taking votes again?—A. Yes, sir.
 Q. This is quite a large town?—A. Yes, sir.
 Q. The polls were closed at 5 o'clock?—A. About 5 o'clock.

Q. And the count was commenced?—A. Yes, sir.

Q. Who was this gatekeeper who the box was left with?—A. I can't tell you his name just now; I don't know him; I have seen him lots of times.

Q. Some one who lived in some other part of the town?—A. No, sir; he lived right there in Platville.

Q. In the other end of the town from where you lived?—A. Yes, sir; I know him when I see him.

Q. Now, how do you get to your home from Platville?—A. On the train generally; sometimes we drive; but it was muddy.

Q. Was there a train going south Wednesday morning or forenoon?—A. One went at 12 o'clock and I got home just—or 11.55.

Q. Had all the returns been filled in?—A. Yes; all of them; Mr. Gleason signed them up here about 11 o'clock and said he would be back in time, and I wanted to go home; I had a sick horse and I wanted to get home.

Q. What I mean is did you sign some returns in blank, then the figures were made out after you went away?—A. No, sir. Their figuring was done before I went away; I think so. He said he would be back in time for me to sign up, so I could go on that train.

Q. Did you come up here and bring the returns up here that day?—A. No, sir; I telephoned up here.

Cross-examination by Mr. ADAMS:

Q. I suppose, Mr. Barber, when you got back to the voting place there on November 5, 1912, after you had been out to dinner at the noonday meal, you found everything just as you had left it?—A. Just as we had left it.

Q. The ballot box and everything you had left there?—A. I don't think a person had been in there, only just the gatekeeper.

Q. Everything was just exactly as you had left it when you went out to dinner?—A. It looked just the same; I don't think it had been touched.

Q. It was sealed when you got back just as it was when you went away?—A. Yes, sir.

Q. The ballot box was locked?—A. Yes, sir.

Redirect examination by Mr. FELLOWS:

Q. Did you adjourn at supper?—A. No, sir.

Q. Or breakfast, either?—A. I didn't go to breakfast; I had a headache, and I don't think Mr. Gleason but Mr. Corse and Mr. Shanplo and the clerk went to breakfast.

Q. While they were to breakfast you stayed there?—A. Yes, sir, and the gatekeeper was there and nobody else; I don't think anybody came there that morning.

Q. When you went to supper, did you all go together or two at a time?—A. Supper was fetched in.

Recross-examination by Mr. ADAMS:

Q. You are a Republican, Mr. Barber?—A. I am a Republican, but I do not vote a Republican ticket all the time.

Q. You vote just as you see fit?—A. I registered as a Republican.

Q. You were November 5, 1912?—A. Yes, sir.

Q. Everything as far as you know there in connection with the election on November 5 was fair, square, and honest?—A. Just as honest, I think, as could be.

O. J. GLEASON, recalled for further cross-examination by Mr. Adams, testified as follows:

Q. Mr. Gleason, when your board went out for your noon recess to get dinner. I understood you to say that the ballot box was sealed and locked, and that you left the election supplies, ballot box, etc., in the custody and care of one of the gate keepers?—A. Yes, sir.

Q. When you got back after your noon recess, I suppose that everything was just as you left it when you went away?—A. Yes, sir.

Q. Was the ballot box still sealed as it was when you went to dinner?—A. Yes, sir.

Q. Did you find that anything had been interfered with or molested?—A. No, sir; not in any way.

Q. All your election supplies there and the books and ballot box and everything you left there?—A. It was all just the same.

Q. What do you say as to whether the election was fairly, honestly, and squarely conducted from beginning to end on that November 5, 1912?—A. It was, sir.

Q. Mr. Gleason, one question or two. Burton Shamplo was a member of that election board that day, was he not?—A. Yes, sir.

Q. Was he one of the justices of the peace of that township at that time?—A. Yes, sir.

Q. He had been for some time?—A. Yes, sir.

Q. Do you know who administered the oath to Mr. Shamplo to act as an inspector of election?—A. As I remember it, I think I did.

Q. You were one of the inspectors?—A. Yes, sir.

Q. You were sworn in the first one yourself?—A. Yes, sir.

Q. Afterwards you administered the oath to Mr. Shamplo after you had been sworn in by him?—A. As I remember it.

Q. Now, Mr. Gleason, Mr. Barber, who has been on the stand this morning, I understood him to say before he left and went away from that election place on the morning of the 6th that all the returns he signed were filled in before he left and signed before he left. Does that in any way refresh your recollection in regard to that circumstance?—A. I testified, I think, yesterday, if I remember, that it was not clear in my mind whether the books were completed all except signing. He has told me that was so; that they were.

Q. Does that refresh your recollection any now?—A. I am inclined to think so myself, because we took those returns immediately after that; I remember that I could not catch the train; I was to work and could not catch the train, and Mr. Barber could by letting him sign; he could catch the train. I think we did have those returns ready to go.

Q. All filled up?—A. Yes, sir.

Q. And signed?—A. Well, we signed immediately after he signed—first let him sign.

Q. I suppose that some of you had to stay there to see that they were sealed up and ready to forward, and that took a little longer?—A. Yes, sir.

Q. Mr. Barber signed up then; then the rest of you, before Mr. Barber left; you sealed them and put them in an envelope so they were sealed and got ready to forward to the proper authorities?—A. Yes, sir.

E. R. GALLOWAY being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. FELLOWS:

Q. Mr. Galloway, your home is where?—A. In Reading.

Q. In the village?—A. No, sir; in the country.

Q. How far do you live from the village?—A. Four miles.

Q. The village of Reading is in the township of Reading?—A. Yes, sir.

Q. That is where you held your election?—A. Yes, sir.

Q. Whereabouts in the village did you hold the election?—A. In the village hall.

Q. Were you supervisor of the township on the 5th of November last?—A. Yes, sir.

Q. As such supervisor did you sit on the board of election?—A. Yes, sir.

Q. Are you able to state from memory who the other members of the board were?—A. The senior justice and the next justice of the peace and the township clerk and supervisor.

Q. Who was the other clerk?—A. The deputy clerk was Mr. Hoskins.

Q. That election was opened in the morning?—A. Yes, sir.

Q. Is the vote of that township reasonably large?—A. Yes, sir; usually when the whole vote is out, I think it has been as high as 640.

Q. At this election November 5, 1912, the vote was somewhat larger than usual?—A. Yes, sir.

Q. You had provided a ballot box for the ballots for the candidates and also for the constitutional amendments?—A. The township has four ballot boxes. Three of them were in a condition to be used and the fourth one I think the lock was broken and was not used.

Q. You had two constitutional amendments besides the regular ticket for the candidates?—A. I think so; yes, sir.

Q. Now, during the day did the ballot box which you were using to cast the ballots for the candidates become full?—A. About 11 o'clock I called the attention of the board that we would not be able to put all the ballots in that box.

and they thought we had better take some means to procure some other box, so I called the village marshal, he stood outside of the railing, and had him procure a box with a slot cut in to admit the ballots, and he did so.

Q. What was it?—A. It was a little shoe box I think, probably 30 inches long, 18 inches deep, and 14 inches wide.

Q. He brought it to you with the slot cut in?—A. Yes, sir.

Q. Was it securely nailed on when he brought it?—A. Yes, sir.

Q. What was done with it after he brought it?—A. It was placed under the table until necessity compelled us to use it, which I think probably might have been somewhere about 1 o'clock.

Q. Then what was done?—A. Then we took the other box and pushed it to one side and used this box to deposit ballots in.

Q. Was there any lock on it?—A. No, sir.

Q. Now, after the polls had closed at 5 o'clock how did you get the shoe box open?—A. There was a hatchet there and we took the hatchet and pried the top off.

Q. Then proceeded with the canvass?—A. Yes, sir.

Q. I think it has been testified here that you had a noon adjournment?—A. No, sir; not from the time we began at 7 o'clock until the next morning when we finished counting.

Q. You didn't have an adjournment there for any meals?—A. No, sir; dinner nor supper.

Q. How did you arrange that?—A. We went out part of the board at a time. I think in the evening the board went down, with the exception of the gate-keeper.

Q. What was done with the ballot boxes?—A. They were left there.

Q. What time did you go to supper?—A. Immediately after closing the polls.

Q. Before you opened the ballot box at all?—A. Yes, sir.

Q. Then at breakfast time, did you divide up and go or leave at once?—A. I don't think we had any breakfast.

Q. Where was the election held as to whether on the ground floor or not?—A. It was on the second floor.

Q. In what place?—A. In the village hall, in the council room.

Q. During the day was there an application for the right to vote on behalf of certain men who claimed they could not get up in the polling place?—A. Yes, sir.

Q. How were they permitted to vote, if they were permitted to vote?—A. The request was made by a man who stood outside of the railing, and the question was put to the board whether they would allow them to vote, and the board consented. The question was put to the two challengers, and they consented. Then I told the senior justice and the next justice of the peace, who would be deputy clerk, and the challengers to go down on the street and take the ballots.

Q. What place on the board were you filling at that time?—A. I was chairman.

Q. And as such received the ballots and put them in the ballot box?—A. Yes, sir.

Q. When these men went down, did they return with the ballots?—A. Yes, sir.

Q. What was done with them?—A. They were deposited in the ballot box.

Q. How many in number were they?—A. Well, I think there were 3—3 votes.

Q. You don't remember whether they voted on the constitutional amendments or not, do you?—A. No, sir.

Q. But there were 3 votes?—A. Yes, sir.

Q. All those 3 ballots which you speak of were votes for the various candidates?—A. Yes, sir.

Q. But whether they voted the constitutional amendments or not you don't remember?—A. I couldn't say.

Q. Were there any other voters challenged there that morning that had to be sworn in or that were sworn in?—A. I don't think they were challenged; there was a question raised there in the morning over the matter of registration; some of them registered in the village and supposed they were registered in the township; I think there were two that the oath was administered to them in regard to their qualifications as electors at that polling place, and they were allowed to vote and registered at that time.

Q. They were men who lived in the village?—A. Yes, sir.

Q. And the village is in the township?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. Do you remember, Mr. Galloway, who administered the oaths to those voters as to their qualification?—A. They were administered by myself.

Q. To whom were the oaths administered; do you remember the names of the men?—A. That would be a hard matter to tell.

Q. Those two voters were not challenged?—A. Well, no, sir; I don't think they were, unless you might call that method a challenge.

Q. You didn't mark their ballots as challenged votes?—A. No, sir.

Q. There was some question raised. I take it, as to their qualification and then you administered an oath to determine whether they were entitled to be registered at that time?—A. Yes, sir.

Q. And you allowed them to register at that time?—A. Yes, sir.

Q. And then vote?—A. Yes, sir.

Q. You had the registration book there, of course?—A. Yes, sir.

Q. Can you tell me who the other one of those men were who were allowed to register and then vote that day?—A. I couldn't place it without the register; I presume the register will show.

Q. You can't now recall their names?—A. No, sir.

Q. There was a gentleman by the name of Fitzimmons there that day?—A. Yes, sir.

Q. Did he vote?—A. No, sir.

Q. He was a Democrat?—A. I couldn't say. I presume he may have been.

Q. You understood at the time of that election, on that election day, that Mr. Fitzimmons was a Democrat?—A. No, sir; I took it from the general idea that the Fitzimmonses were Democrats that probably he was.

Q. What was his given name?—A. Clare.

Q. He was a son of Mr. Fitzimmons, who at that very time was chairman of the Democratic county committee of Hillsdale County?—A. I presume so; yes, sir.

Q. He came there and offered to vote, did he; wanted to vote and asked for a ballot?—A. I don't know whether he came inside; I don't remember whether he came through the gate. I guess he did, though.

Q. Well, now, he asked for a ballot?—A. Yes, sir.

Q. No ballot was given him?—A. He was not allowed to vote.* He didn't vote.

Q. Did Claude Rice vote there that day?—A. Yes, sir.

Q. You knew him at that time?—A. Yes, sir.

Q. He was a Republican?—A. I couldn't say.

Q. Hadn't he been a Republican before that day?—A. I don't know; I couldn't say. He was a new voter there, this young man, that just came into his franchise probably two or three years ago; I didn't know what his politics were.

Q. Did John Kettle vote there that day?—A. I think he did, but I will not say.

Q. Had you known him before that day?—A. Why, no; he was a stranger, practically, in town; a real estate man that has been there probably two or three years.

Q. You understood he was a Republican?—A. I don't know what his politics were.

Q. Do you know a man named Stroup, a miller?—A. I don't know such a man.

Q. Did he vote there that day?—A. I couldn't tell you.

Q. J. H. Stroup?—A. He is a stranger to me; the name is. I don't know him.

Q. He was a brother-in-law of the man Hawks spoken of?—A. Possibly. I don't know him; I don't know that he voted there.

Q. Jay Campbell was a member of that board?—A. Yes, sir; he was the senior justice.

Q. He was a justice of the peace?—A. Yes, sir.

Q. You were sworn in as an inspector by Jay Campbell?—A. I think so; yes, sir.

Q. Then you swore in Jay Campbell after you had been sworn in by him, and at the time he swore you in he was a justice of the peace?—A. He was; yes, sir.

Q. Of that township?—A. Yes, sir.

Q. And had been for a year or more?—A. For a number of years.

Q. Now, do you recollect—you say you don't recollect—or do you recollect whether J. H. Stroup was challenged there or an objection was made to him voting that day?—A. I don't recollect the name at all.

Q. Now, who made the objection to Claude Rice voting?—A. I couldn't say.

Q. Was there a Democratic challenger there?—A. Yes, sir.

Q. Did he object to Rice voting?—A. I couldn't say.

Q. Do you know who made any objection to John Kettle voting that day there?—A. No, sir; I didn't know that he was objected to.

Q. Claude Rice was permitted to vote and did vote?—A. I think he was; yes, sir.

Q. John Kettle voted there that day?—A. I couldn't say; I presume so; I don't know.

Q. Who made the objection to Mr. Fitzimmons voting?—A. Well, I don't know as I can tell you; I guess it was a general objection by the board, but I don't know.

Q. I show you the poll book of the township of Reading, Mr. Galloway, and ask you whether it does not appear by that book that is shown you that John Kettle voted the seventy-eighth man there that day?—A. Yes, sir.

Q. That is correct?—A. Yes, sir.

Q. His name is there as the seventy-eighth voter on that poll book?—A. Yes, sir.

Q. Do you remember whether Claude Rice voted early in the day or late in the day?—A. Well, I presume it was about near the middle of the day, but I don't remember.

Q. I call your attention again to the poll book of Reading Township of the general election held November 5 and to the name opposite ballot No. 440, you find the name of Claude Rice there, don't you?—A. Yes, sir.

Q. There were 491 ballots handed out there that day?—A. Yes, sir.

Q. For the candidates for the various offices, I mean the ballots that contained all the candidates of the various offices, 491 ballots were passed out by your board that day?—A. Yes, sir.

Q. And Claude Rice appears on this poll book as having had ballot No. 440?—A. Yes, sir.

Q. And voted?—A. Yes, sir.

Q. There that day?—A. Yes, sir.

Q. Who was the Democratic challenger there that day?—A. Friend Potter was requested by the township chairman—the Democratic township chairman—to act as challenger, and he acted in the forenoon until somewhere about noon, and he said he wanted Mr. Holdridge to act in his place during the afternoon.

Q. Did he so act during the afternoon?—A. Yes, sir.

Q. Then, Mr. Holdridge acted in the afternoon in his place?—A. Yes, sir.

Q. I understood you to say that you were the chairman of that election board that day?—A. Yes, sir.

Q. You used a box for the purpose of depositing the ballots in, after your regular ballot box got full?—A. Yes, sir.

Q. The ballots that were used at that election were unusually large in size, were they not?—A. Yes, sir.

Q. And you had a very large vote there that day—491?—A. Four hundred and eighty or four hundred and ninety ballots.

Q. Four hundred and ninety-one?—A. Yes, sir.

Q. As shown by your poll book that is correct, is it not?—A. I think it is; yes, sir.

Q. Those ballots, about how large were they? What would you say was about the size of them?—A. Oh, they were possibly something like a yard square.

Q. In order to get them in the ballot box they had to be folded so that they were several thicknesses?—A. Yes, sir.

Q. And that made the ballot very bulky?—A. Yes, sir.

Q. You determined along in the forenoon, election day, that that ballot box would not have capacity sufficient to hold all the ballots that were likely to be cast there that day and deposited in that ballot box, didn't you?—A. Yes, sir.

Q. And you made provision, therefore, to have prepared a ballot box?—A. Yes, sir.

Q. To accommodate all the ballots that would probably be voted there at that election?—A. Yes, sir.

Q. Is that correct?—A. Yes, sir.

Q. And you obtained and got a substantial box with a slot cut in about the same size, I suppose, as the slot you had in your regular ballot box?—A. Sufficient to admit the ballots.

Q. No larger than just sufficient to do that?—A. No, sir; as near as could be.

Q. The lid was securely fastened and nailed to the box, was it not?—A. It was extra well nailed. It seems to me it was nailed better than in the natural condition it would be.

Q. It was a good strong box?—A. Yes, sir.

Q. You took especial pains to see that it was a secure box, didn't you, as chairman of that board?—A. I did.

Q. And you were satisfied that it was such a box?—A. Yes, sir.

Q. Before you put any ballots in it?—A. Yes, sir.

Q. Well, you said you took a hatchet to get the lid off. You mean you split the lid, it was so securely nailed that you split the lid when taking off?—A. It was not fit to go back on.

Q. It was so securely nailed that in getting that lid off you broke the lid?—A. Yes, sir.

Q. When you got through counting, your board, you took all those ballots and put them in the regular ballot box?—A. Yes, sir.

Q. So when you got all through and your election board had completed its duties as a board, you took all the ballots that were cast there at that election that had been voted and put them into the regular ballot box that your township had provided?—A. Yes, sir.

Q. Then you locked that ballot box and sealed it up as the law requires, didn't you, with all the ballots in it?—A. Yes, sir. Not all the ballots; I mean just the——

Q. I mean all the ballots. When you sealed up that ballot box and locked it you had in it all the ballots that had been voted for the various candidates for office?—A. Yes, sir.

Q. On the ticket at that general election of November 5, 1912?—A. I think that is true; yes, sir.

Q. You stated that some one that day made application to your board to have the votes of a couple of men who were invalids, I take it, received downstairs and brought up and deposited in the ballot box. Now, Mr. Corbett was the man who made the application to your board to have that done?—A. Why, Mr. Corbett was there, and Mr. Kellogg was there, and 15 or 20 other voters sat on the outside of the railing.

Q. But Mr. Corbett asked you to do that?—A. Well, I will tell you——

Q. Didn't he?—A. Mr. Corbett said he had been requested to ask the board by Mr. Rising, and Mr. Rising was a man nearly 80——

Q. Never mind that now.

Mr. FELLOWS. He is testifying to what Mr. Corbett said, and that is what you asked him.

Mr. ADAMS. I asked a question which did not call for the conversation, whether Mr. Corbett did not make the request to that election board that these men be permitted to deliver their ballots, or that in substance, to some member of the board who would go down on the street and receive those ballots.

Q. Did not Mr. Corbett make that request to your board first?—A. Why, I think Mr. Corbett said he had been asked to make the request.

Q. He was the first man who stated that to your board? What is Mr. Corbett's given name?—A. E. C.

Q. He is the postmaster there, or was then, at Reading?—A. Yes, sir.

Q. Now, then, after Mr. Corbett made that request to your board of election there that day you determined that that might be done; then you delegated Mr. Campbell to go down?—A. I did.

Q. You delegated Mr. Campbell, one of the inspectors of that election, to go downstairs and receive the votes of two men?—A. Mr. Campbell and the two challengers, Mr. Holdridge—and Mr. Gardman was for the Progressives and Mr. Holdridge for the Democrats.

Q. Mr. Campbell was a Republican inspector for that board?—A. Yes, sir.

Q. He went down?—A. Yes, sir.

Q. Who was another one?—A. Mr. Northrup.

Q. What position did he hold on the board?—A. Senior justice.

Q. He was one of the inspectors on that board?—A. Yes, sir.

Q. Who else went down, what members of the board?—A. The deputy clerk went down.

Q. What is his name?—A. Hawkins.

Q. He went down—he was one of the clerks at that election?—A. Yes, sir.

Q. And, in addition to those three men, the two challengers?—A. Yes, sir.

Q. The challenger of the Democratic Party?—A. Yes, sir.

Q. Who was Mr. Holdridge?—A. Yes, sir.

Q. The other challenger was who?—A. Charles Gardman.

Q. What party did he represent?—A. The Progressives.

Q. Those five men went down?—A. Yes, sir.

Q. Those two men who were proposed by Mr. Corbett that you have the members of your board go down and take their votes downstairs—what were their names?—A. A. J. Rising and S. H. Hill, I think. I don't know that I have the initials for sure.

Q. So you delegated those members of your board to go down and get those ballots of those two men?—A. Yes, sir.

Q. Mr. Rising was a Republican at that time, as you understood?—A. No, sir; I presume not. I don't know what his politics were.

Q. You supposed he was a Republican?—A. No, sir; he had for years passed as a Prohibitionist.

Q. While he had been a Prohibitionist in his proclivities, he was registered as a Republican in that township, wasn't he—enrolled as a Republican?—A. No, sir; I don't think he was.

Q. Now, this man Hill and this other man that Mr. Corbett proposed there that you should send some members of your board down to get their votes, he was known by you at that time, I suppose, as a Republican?—A. Yes, sir; I suppose he was a Republican, although he leaned, as you say, the other way at that time.

Q. A little "Bull Moosey"?—A. No, sir; a little Democratic.

Q. Now, about what time in the day did those two gentlemen, Mr. Rising and Mr. Hill, vote; about what time in the day?—A. I don't know; I presume in the afternoon; I think so.

Q. They were both received at the same time?—A. Yes, sir.

Q. Well, Mr. Rising and Mr. Hill both voted and their votes were deposited in the ballot box that day?—A. Yes, sir.

Q. Your election board of inspectors, yourself and A. J. Northrup and Jay Campbell were all Republicans?—A. Yes, sir.

Q. This Mr. Rising, did you know him that day?—A. I didn't see him.

Q. Had you been acquainted with him before that?—A. I would have known him if I had seen him. I have known him ever since I have been old enough to recognize any one.

Q. An old man was he?—A. He was probably not far from 80.

Q. Feeble at that time?—A. Yes, sir.

Q. Had he been before that?—A. Yes, sir; he had been for a number of years a cripple, and goes in a wheeled chair.

Q. He had been a cripple and had been pushed around in a wheel chair when you had seen him?—A. Yes, sir; whenever I have seen him for the last three or four years he was in a wheel chair.

Q. Mr. Hill, what was his physical condition prior to November 5, 1912?—A. Bad.

Q. What had you observed about him?—A. Well, he was for the last five or six years confined to crutches, and for the last year I don't know as he was even able to get around with crutches; I could not say positively, but I think so.

Q. How old a man is he?—A. He is a young man, probably 35.

Q. You haven't seen him in five years except he has been on crutches?—A. No, sir; the last six or eight years.

Redirect examination by Mr. FELLOWS:

Q. What was there about the young man, Fitzimmons?—A. Fitzimmons he was away to Chicago and the board thought he had lost his residence.

Q. He was not reregistered when he came back?—A. No, sir.

Recross-examination by Mr. ADAMS:

Q. This Fitzimmons claimed there that day that he was only temporarily away, didn't he?—A. That was the question raised; I think that was the question raised.

Q. In some way your registration board had scratched his name off the registration list, hadn't it?—A. I presume that is true; I don't remember just what his change was.

Q. Don't you remember now that the board had crossed Fitzimmons's name off from the registration list, and that question was raised that very day there by Fitzimmons before your election board?—A. His name was crossed off.

Q. When he came in there to vote that election day he claimed to your board that you didn't have any right to scratch his name from the registration list?—A. I think he did.

Q. He insisted on his right to vote there at that election, didn't he?—A. Yes, sir; he made a request to vote; I think, if I remember right, he claimed that he had not lost his residence.

Q. He claimed to the board that he had only been temporarily absent from that town?—A. I think that was his claim; yes, sir.

Q. Now, Claude Rice; there was some question raised about his voting there, was there not?—A. Yes, sir.

Q. He was a Republican?—A. Well, I couldn't say as to that.

Q. You knew that he had been voting the Republican ticket?—A. He hadn't been voting but a very few years; just became a voter, probably 22 or 23 years old.

Q. You understood before Claude Rice voted on that day that he was a Republican in politics?—A. No, sir; I did not understand it in that way; in fact, I never made any particular inquiry at the time of the election.

Q. I don't suppose you did right there that day, but before that 5th day of November, 1912, you understood, I suppose, that Claude Rice was a Republican in politics?—A. From the fact that his father was before, I judged probably he was.

Q. In other words, the boys usually follow their fathers, is that the idea? Well, now, Claude Rice voted there?—A. Yes, sir.

Q. You knew where he lived, didn't you?—A. Yes, sir.

Q. He lived outside of the township at that very time?—A. His household goods—

Q. He was living outside of the township at that very time of the November 5, 1912, election, was he not, with his family?—A. I think he was staying with his father-in-law.

Q. He was working there, was he not, at his father-in-law's?—A. No, sir; I didn't so understand it.

Q. He is living with his father-in-law on the outside of the town now?—A. Well, now, since that time, there has been some change in the property, I understand.

Q. Please answer my question. On November 5, 1912, Claude Rice was not living in Reading Township, was he—that is, he and his family were outside of the township living with his father-in-law outside of the town?—A. He claimed he stayed Saturdays in Reading village.

Mr. ADAMS. I move to strike that out as not responsive.

Q. You knew on November 5, 1912, when you acted on that election board in Reading Township, that Claude Rice and his family were outside of Reading Township, didn't you?—A. Yes; I understood he was with his father-in-law.

Q. And his father-in-law was living outside of Reading Township at that time?—A. Yes, sir; in Cambria Township.

Q. Claude Rice has not moved back into Reading Township since November 5, 1912?—A. I can't say whether he had moved out.

Q. The question I am asking you is whether it is not a fact that Claude Rice and his wife and family, whatever it may be, has not moved back into Reading Township since November 5, 1912?—A. Well, I don't think they have; no.

Q. Now, you allowed Claude Rice to vote?—A. Yes, sir.

Q. Notwithstanding he had been outside of that township and was outside of that township on November 5, 1912, you still allowed him to vote there at that election—

A. Well—

Mr. ADAMS. Wait a minute.

Mr. FELLOWS. If the answer doesn't suit you, you can move to strike it out, but the witness has a right to answer the question.

(Last question read.)

Q. That can be answered yes or no.—A. Yes, sir; but I can't make an explanation.

Q. They will allow you to make any explanation you wish; I want an answer to the question and they can call for your explanation afterwards.

Mr. FELLOWS. The purpose is to get a misleading answer without an explanation.

Mr. ADAMS. If misleading, he can be given an opportunity to get away with the misleading part of it.

The WITNESS. Yes, sir.

Q. Now, Claude Rice's name, your board had also removed from the registration list?—A. Well, I don't know; was he the one that was sworn in in the morning?

Q. I don't know; I don't know about those things; I am trying to find out. But is it not a fact that you had, or the board of registration had, taken Claude Rice's name off the registration list before the November 5, 1912, election?—A. No, sir; I don't think they had taken it off.

Q. Do you know; are you sure?—A. I think they had talked about removing his name, but I don't think it was removed.

Q. You don't think it had been removed?—A. No, sir.

Q. But whether it had been removed as a matter of fact or whether it had not been removed from the registration list or book, notwithstanding the fact that objection was made to Claude Rice voting, he still voted there that day, didn't he, and his vote was received?—A. Yes, sir.

Q. And put in the ballot box with the other votes?—A. Yes, sir.

Q. Do you know about what time in the day he voted? He voted No. 440, didn't he?—A. Yes, sir.

Redirect examination by Mr. FELLOWS:

Q. What was there about this man Rice?—A. Well, he had been going back and forward to his father-in-law's home to his own home in the village of Reading and claimed his residence in Reading, and that he came there and stayed over Sunday.

Q. He still had his household goods there—A. Yes, sir.

Q. How long had Fitzimmons been away?—A. I don't know; quite a long time; the idea I got and the public got was that—

Mr. ADAMS. I object to the witness stating the idea the public had or the idea he had as a conclusion, and as hearsay, incompetent, irrelevant, and immaterial; he can state what he knows, but his ideas and conclusions are certainly improper.

Q. Go ahead.—A. I don't know anything about what Fitzimmons—

Q. Now, what did the board act on?—A. They acted on this idea that he had lost his residence and gone to Chicago and gone in business there and the majority of people there thought that he had a job in Chicago and had removed there.

Mr. ADAMS. I move to strike out what the idea of the people was and a conclusion of the witness as hearsay and incompetent.

Q. He had been running the telephone office there before he left?—A. He had been manager there.

Q. And he moved away?—A. Yes, sir.

Q. And went to Chicago?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. You say this man Rice had been going backwards and forwards; what was he doing out there to his father-in-law's just before election?—A. Farming; that was his occupation.

Q. His wife was out there?—A. Yes, sir.

Q. How long had he gone out there prior to November 5, 1912?—A. He had been there ever since spring—back and forth.

Q. Working on the farm?—A. Yes, sir.

Q. How long had his wife been out there?—A. I think they both went at the same time.

Q. He went out there in the spring, did he?—A. He went out there in the spring prior to the 5th of November.

Redirect examination by Mr. FELLOWS:

Q. They still occupied a house in Reading?—A. Yes, sir; they stayed in the house part of the time.

Mr. ADAMS. Mr. Rice came back to Reading every Sunday?

A. Yes, sir.

Q. But the balance of the week they were on the farm?—A. I asked him—

Mr. ADAMS. That is not competent what he might have said.

Mr. FELLOWS. I think it is, the question of the intent of the voter controls.

Mr. ADAMS. I object to it as hearsay and incompetent.

Q. Was he working there six days of the week and his wife was out there on the farm with his father, and he was working the farm prior to November 5?—A. Yes, sir; a large part of the working days.

Q. You say since November 5 they have moved their stuff out?—A. I don't know that they have.

Q. You don't know whether he has moved out there, then, of your own knowledge or did before November 5?—A. From what he told me November 5 I should judge he had not.

Mr. ADAMS. I move to strike out what he told him.

Q. You don't know of your own knowledge whether Claude Rice had removed his household effects?—A. No, sir.

Q. Out of Reading Township before November 5, 1912?—A. No, sir.

Q. You knew that Mr. Fitzimmons had not disposed of his interest in that telephone business there on November 5, 1912, that it was yet in his possession?—A. Well, now, I don't know that has been disposed of; I can't tell you what date the transfer was made.

Q. Do you say it has been disposed of; that Fitzimmons disposed of his interest in the telephone business in Reading Township?—A. No; let us see; I would have to go back and find out before I could answer the question; it was composed of Mr. Fitzimmons and Mr. Doty and Mr. Kellogg and Mr. Mallory. I think the matter is now held completely by Mr. Fitzimmons; I don't know exactly what the conditions are.

Q. You understood November 5, 1912, that Fitzimmons had had an interest in the telephone business in the township of Reading?—A. I think he held stock there.

Q. You understood on November 5, 1912, that Fitzimmons then had an interest in the telephone business that was being operated in the township of Reading, didn't you?—A. I don't know as I did; I don't know what condition the company was in; I knew there was a readjustment talked of.

Q. Don't you know that on that very day, the 5th day of November, 1912, that Clare Fitzimmons owned a controlling interest in that telephone business in the town of Reading?

Mr. MAYNARD. I object to that as incompetent and immaterial.

Q. In the village of Reading, of your own knowledge, don't you know that to be true?—A. On the 5th day of November?

Q. Yes, sir; before he came up there and asked to vote at that election.—A. Well, I don't know; possibly.

Q. Will you swear that you don't know of your own knowledge when Clare Fitzimmons came up there and offered to vote at that election; that you did not know then and there that he, Fitzimmons, was the owner of the controlling interest in that telephone business in the town of Reading, village of Reading?

Mr. FELLOWS. I object to the question of ownership; that would not give a man a right to vote there; the question is where his residence was.

A. Well, I don't know much about their business; I will not swear to it who was the owner of that company.

Q. Did you know on November 5, 1912, that is what I asked you, or didn't you know?—A. I know just as much to-day about it as I did then.

Q. Did you know or not of your own knowledge, the question calls for your knowledge, that he owned a controlling interest in the telephone business in the village of Reading on that very day when he came there to vote?—A. I would have to base my knowledge upon somebody else's statement.

Q. Then, you don't know of your own knowledge, is that the idea?—A. I don't see how I could. I never saw the transfers.

Q. Were you not a stockholder in that company?—A. I expect so.

Q. Were you not present at the stockholders' meeting in July, 1912, when that telephone company held its annual meeting?—A. I think I was there.

Q. At that very meeting is it not a fact that Clare Fitzimmons had a majority of the stock and voted it right at that meeting you were present at?—A. I think he did.

Redirect examination by Mr. FELLOWS:

Q. What was it Rice said about his residence?

Mr. ADAMS. I would like to ask a question first.

Q. Did he tell you anything about that on election day there while the board was in session or was it at some other time?—A. I think before that time; I think I asked him on election day why—the question was asked him why he should not be removed from the registration.

Mr. ADAMS. I object to the question on the ground that it is hearsay and something that was not said by them on election day while acting as inspector of the election and as hearsay and irrelevant, incompetent, and immaterial.

Q. State all the talk you had with Rice.—A. Mr. Clark told me that Rice had not lost his residence; that he claimed a residence in the village. He said, "I live with my father-in-law; but I own a home and my home is here, and my household goods are here, and my stuff is here, and I do my cooking and stay there."

Q. Was his vote challenged?—A. No, sir; I don't think it was.

Q. Did Fitzimmons offer to take an oath that he was a resident of Reading?—A. No, sir; I don't remember. There was something said there at the time in the room, possibly, but I don't remember of any oath.

Q. Of any oath being taken by him?—A. No, sir.

Q. You stated that since election there had been some change in property matters as far as Rice was concerned?—A. I think there is.

Q. He moved his goods out there?—A. I don't know whether they have been moved out or not.

Q. You don't live in the village?—A. No, sir. The property which he occupied in the village belonged to his father-in-law, I think; possibly it might have been given to the daughter; I think his father-in-law held the title.

Recross-examination by Mr. ADAMS:

Q. The only information you got about Claude Rice you just testified to to counsel upon the other side that you got through the county clerk?—A. The township clerk.

Q. You got that information you have just given in answer to the question of Mr. Fellows, from your township clerk, indirectly from Mr. Rice?—A. Yes, sir.

Mr. ADAMS. I move to strike that out as collateral and hearsay under the admission of the witness that the information he got from the township clerk was what Mr. Rice stated, on the ground that it is hearsay, irrelevant, and immaterial.

Redirect examination by Mr. FELLOWS:

Q. This information that came from him to the clerk came to you while sitting on the board of election, and came to you in your official capacity?—A. Yes, sir.

Recross-examination by Mr. ADAMS:

Q. Mr. Fitzimmons's vote was not challenged, was it?—A. I don't remember just what brought that about.

Q. I say Mr. Fitzimmons's vote was not challenged?—A. Will you explain the method of challenging, challenged by the party—

Q. Was he challenged by any member of the board or any challenger of any party or anybody standing around there or anybody sitting or by any busy idler about his right to vote?—A. No, sir; I don't think so.

Q. Just some talk about his right to vote, but no challenge made to the vote of Clare Fitzimmons that day?—A. No, sir; not that I remember of.

Q. You just declined to give him a ballot to vote there—the board declined to give him a ticket to vote?—A. Yes, sir.

Q. That is all there was to it?—A. Yes, sir.

Redirect examination by Mr. FELLOWS:

Q. As a matter of fact, you did not think it was your duty to give any man a ballot and permit him to vote if he is not registered whether he is challenged or not?

Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial; the question is, what they did that day.

Recross-examination by Mr. ADAMS:

Q. Was there a man voted there by the name of Kettle?—A. I presume he did; he lives in the village.

Q. Was his name on the registration list?—A. I couldn't say; it seems to me as though he registered that day.

Q. As a matter of fact, his name had not preceded that registration?—A. I think he was registered that day.

Q. He had not been registered in that township prior to that November 5, 1912, election?—A. I don't know.

Q. Can you say whether his name was on the registration list?—A. No, sir; I can't.

Q. In that township?—A. No, sir.

Q. Whether in fact he had been registered in that township prior to November 5, 1912, election?—A. I didn't say so; if he voted that day he was surely on the registration.

Q. You put his name on the registration book that very day, didn't you?—A. I presume so.

Q. He was not on the registration book when you opened those polls November 5, 1912; isn't that true?—A. I don't recollect.

Q. Do you know about that?—A. There is one thing sure, if he voted there we are certain that he had registered prior to the election day.

Q. What was his given name?—A. John Kettle.

Q. John Kettle voted there; I show you the poll book for the township of that election; John Kettle voted ballot No. 78. didn't he?—A. Yes, sir.

Q. This is John Kettle we are talking about.—A. That is the only one I know of.

Q. Now, I ask you whether it is not a fact that that Mr. John Kettle was not registered at the time that election board convened November 5, 1912?—A. He might have been registered that day.

Q. That is hardly an answer to my question; the question is whether it is not a fact that John Kettle, who voted ballot No. 78 at that general election November 5, 1912, was not on the registration books of the township of Reading when that election board organized that day?—A. If he was registered that day he was not.

Q. Is that the best answer you can make to it?—A. I am not positive whether he was registered that day; I would answer yes or no if I was.

Q. If you are not positive about it, that is the best answer you can make? (No answer.)

Q. This same John Kettle, who was registered there on that election day by your election board, he made no claim to your board that day that he was outside of the township when the registration was had in that township, and made no claim to your board that there was any reason why he could not have registered registration day, and yet you permitted him to register and vote on November 5, 1912, didn't you?—A. He must have made some claim.

Mr. MAYNARD. We will consent that this precinct may be thrown out.

Mr. ADAMS. You are very liberal in your consents.

CLARENCE LAMPIERE, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. FELLOWS:

Q. Where is your home?—A. Woodbridge.

Q. Do you hold any official position in that township?—A. I do not at the present time.

Q. Did you on the 5th day of November?—A. Yes, sir.

Q. What position did you hold at that time?—A. Supervisor.

Q. Did you sit on the election in that township on that day?—A. Yes, sir.

Q. Who else constituted the board that day?—A. William Mills, Henry Ewing, and Mr. Gavitt, and Mr. Foster.

Q. Did you take an adjournment at noon?—A. Yes, sir.

Q. For how long a time?—A. One hour.

Q. Was the ballot sealed when the adjournment was made?—A. No, sir.

Q. It was locked, I suppose?—A. Yes, sir.

Q. Who had the key?—A. I think I did.

Q. How many, if any, of the board remained at the polling place during the noon hour?—A. Three of them—myself and the gatekeepers.

Q. Where did the others go?—A. We went to one of the neighbors to dinner.

Q. After the noon hour the voting there was resumed?—A. Yes, sir.

Q. In the same box?—A. Yes, sir.

Q. Did you take a recess at night?—A. No, sir.

Q. What time did you finish up?—A. Nine o'clock the next day.

Q. Did you stop for breakfast?—A. We had our lunch brought to us.

Q. That is true of your supper?—A. Yes, sir.

Q. Those that did remain had their lunch with them?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. Gavitt, did you say?—A. Yes, sir.

Q. G-u-v-e-t-t?—A. Yes, sir.

Q. Edward Gavett was clerk of that board?—A. Yes, sir.

Q. Was he the township clerk?—A. Yes, sir.

Q. Of the township?—A. Yes, sir.

Q. Henry Ewing was a justice of the peace?—A. Yes, sir.

Q. And had been justice of the peace in that township for some considerable time, a year or two, hadn't he?—A. Well, he was justice of the peace two years before he came on the election board.

Q. William Mills was another justice of the peace?—A. Yes, sir.

Q. And you were the supervisor?—A. Yes, sir.

Q. Mr. Lamphere, I show you the statement book and also the poll book and the tally-sheet book which are contained in the envelope addressed to the county clerk, Hillsdale, Mich., said to contain the election returns of the general election held November 5, 1912, in the township of Woodbridge in this county, and I first call your attention to the statement book of that election contained in that envelope, and on the outside of the envelope it says "General election, November 5, 1912, township of Woodbridge, county of Hillsdale, State of Michigan," does it not?—A. Yes, sir.

Q. On the last page of the printed matter, inside of the cover, in this statement book is a certificate as signed by yourself?—A. Yes, sir.

Q. As one of the inspectors of that election?—A. Yes, sir.

Q. It is signed by E. L. Gavett?—A. Yes, sir.

Q. And Henry A. Ewing and William Mills?—A. Yes, sir.

Q. As election inspectors of the township of Woodbridge, county of Hillsdale?—A. Yes, sir.

Q. Now, I notice that just above that name it says this: "In witness whereof we have hereunto set our hands at the place of holding said election in said precinct this — day of November, A. D. 1912." When did you make that certificate out and sign it?—A. I suppose that night or morning.

Q. What is your best recollection of it now?—A. That is my best recollection of it.

Q. You signed up these returns before you left there?—A. Yes, sir.

Q. Was this certificate to this statement book signed there before your election board adjourned?—A. Yes, sir.

Q. On the morning of November 6, 1912?—A. Yes, sir.

Q. This certificate of your election board of the township of Woodbridge is the certificate of your election board, isn't it?—A. Yes, sir.

Q. Now, counsel on the other side called your attention yesterday to this statement book to the fact that the blank spaces here has not any of the blank spaces filled in. That book shows the officers who were voted for at that election, does it not?—A. Yes, sir.

Q. And the number of votes that each man had?—A. Yes, sir.

Q. And then uses that certificate I have already called your attention to?—A. Yes, sir.

Q. Which you say your board signed there that day?—A. Yes, sir.

Q. You say that the ballot box that you used there at that election was not sealed at noon?—A. I did.

Q. Did your board adjourn at noon?—A. For one hour; yes, sir.

Q. How many members of the board stayed there at the noon adjournment while the others went out to dinner?—A. Three.

Q. Besides the gatekeepers?—A. I see there are four names on that paper there—Mr. Foster was the township clerk.

Q. He signed the returns?—A. No, sir. There were two besides stayed there, Mr. Ewing and Mr. Mills.

Q. You went out to dinner, and was gone a few minutes, a little while?—A. Probably half on hour.

Q. You came back?—A. Yes, sir.

Q. Then I suppose the other members of the board went and you remained?—A. They had their dinners with them. They had their dinners right there by the ballot box.

Q. The election was running right along during the noon hour?—A. No, sir.

Q. But they sat right there with the ballot box and the election books, papers, etc., and looked after them?—A. Yes, sir.

Q. The election, as far as you know, was fairly, honestly, justly, and correctly carried out and completed in that manner?—A. Yes, sir.

E. R. GALLOWAY, recalled, testified further on behalf of the contestee, as follows:

Examined by Mr. FELLOWS:

Q. Mr. Galloway, when the marshal brought that shoe box up there was the cover nailed on?—A. Yes, sir.

Q. Securely nailed?—A. Yes, sir.

Q. It was in such shape could you or could you not open it up and show to the electors that it was an empty box before balloting commenced?—A. No, sir; there was no way of looking inside.

Cross-examination by Mr. ADAMS:

Q. When you got through that day counting up your ballots—the number of ballots in the ballot boxes—I mean now the ballots that had the candidates for the various offices printed on them—they corresponded with the poll list, didn't they?—A. Yes, sir.

Q. You didn't have any more ballots in the boxes than the poll list called for?—A. No, sir.

Q. They tallied exactly?—A. I think so; yes, sir.

Q. Was there anything else in the box but the ballots they had at that election in the boxes?—A. There might have been some of the amendments separated out; I could not say; I don't remember that there were.

Q. You don't remember that there were? There was nothing in the box that you improvised there as a ballot box when you came to open it up except the ballots that had been voted there that day?—A. Nothing to my knowledge but ballots.

Q. You looked it over carefully; you were chairman of that board?—A. Yes, sir; I took the box and turned it over and examined it before a ballot was put in, and there was nothing in it.

Q. You made the best investigation you could to see whether anything was in the box before putting any ballots in it at all?—A. Yes, sir.

Q. To open it up you had to smash the lid on it all to pieces with a hatchet, it was so securely fastened, and you emptied the ballots out and looked them over to see whether there was anything in there but ballots?—A. I looked the ballots over.

Q. You didn't have anything in that box except the ballots that had been voted there that day?—A. No, sir.

Q. The number of ballots voted there that day, that you got out of that ballot box when you opened it up and counted the ballots, corresponded with your poll list as to the number of ballots that had been voted there that day?—A. Yes, sir; it surely did. I never heard anything to the contrary.

J. MILTON DEYE, being sworn to testify to the truth, the whole truth, and nothing but the truth, testified on behalf of the contestee, as follows:

Direct examination by Mr. FELLOWS:

Q. Where do you reside?—A. Allen Township.

Q. That is in this county?—A. Yes, sir.

Q. Did you live there on the 5th of November last?—A. I did.

Q. Did you take any part in the election held in that township on that day?—A. Yes, sir.

Q. What part did you take?—A. I was clerk.

Q. Who were the inspectors there?—A. William A. Iles, W. M. Berge, Horace Eldred, and one other clerk.

Q. You were township clerk?—A. Yes, sir.

Q. And have been township clerk for how long?—A. I was appointed to fill vacancy about a year and a half or two years before that, and was elected at the spring election before this November election.

Q. Was Mr. Rickerson the other clerk?—A. Yes, sir.

Q. So at that election you had three inspectors and two clerks?—A. Yes, sir.

Q. Did you take any adjournment at the noon hour?—A. Yes, sir.

Q. Was the ballot box containing the votes for the different candidates sealed?—A. It was.

Q. At the time of the adjournment?—A. Yes, sir.

Q. What was done with the seal?—A. One of the justices had the seal, I don't remember which one.

Q. Who had the keys?—A. The other justice.

Q. Who had the key to the building?—A. We didn't leave the building.

Q. Was the ballot box given to the other member of the board of inspectors?—

A. There was dinner served in the building, away from the polling place; the entire board went in there and took the ballot boxes with them.

Q. They were sealed and given to one, and the key of them held by another?—

A. Yes, sir.

Q. Now, did the other inspector take the ballot box into his personal custody, or did you take it?—A. The other justice took the ballot box.

Q. What was done with it?—A. It was taken with us when we went to the table.

Q. Was the ballot box left in the polling place during the hour you had your noon recess?—A. No, sir.

Q. It was taken out of the polling place and taken into the place where you ate?—A. Yes, sir.

Q. And kept there during the entire noon hour?—A. Yes, sir; until, perhaps, some one of us went back to the polling place.

Q. Then it was returned?—A. Yes, sir.

Q. What was done with the unused ballots?—A. They were put in one of the ballot boxes.

Q. Where was this meal served; was it not in another part of the same hall?—A. In another part; yes, sir.

Q. What hall was it?—A. Ford's Hall.

Q. Is that a place where they have public entertainments?—A. Yes, sir.

Q. Is it a large hall?—A. Not that part of it.

Q. Is it divided into different rooms?—A. Yes, sir.

Q. The ballot box was taken out of the polling place and taken into the room where you had dinner?—A. Yes, sir.

Cross-examination by Mr. ADAMS:

Q. How far from the room in which the voting was done that day was the place where you had your dinner?—A. The door opened from the hall into the room.

Q. From one room into the other?—A. Yes, sir.

Q. You took that ballot box, you were so careful, you took the ballot box and took it right along with you and them—in the custody of the whole board—while eating dinner?—A. That is what I stated a few minutes ago.

Redirect examination by Mr. FELLOWS:

Q. Did you adjourn for supper?—A. No, sir.

Q. Had you supper served in there?—A. Yes, sir; it was brought in there.

Q. What time did you get through?—A. About 11 o'clock.

Q. Which one you men was supervisor?—A. Williams A. Iles was elected chairman of the board.

Q. What position did he hold?—A. Chairman.

Q. I know. I mean what position did he fill in the township?—A. He was just elected that day to take the place of the chairman, the supervisor was on the county ticket.

Q. For that reason he was ineligible to sit on the board and Mr. Iles was elected by the board to take his place?—A. Yes, sir.

Q. He was not elected by the people?—A. He was elected by the people when the board organized.

Q. He was selected by the board and submitted to the people, and the people ratified it?

Mr. ADAMS. I object to the leading questions that counsel is putting to this witness, and for that reason move to strike out the last answer and the last four questions that counsel has put.

Q. I will ask you if Mr. Iles was selected by the board and the selection ratified by the people—if that is the way it happened?

Mr. ADAMS. I object to that as irrelevant and immaterial, and leading and calling for the conclusion of the witness, and not for a statement of what occurred there.

A. He was selected by the board and ratified by the people there.

Cross-examination by Mr. ADAMS:

Q. I understood you to say that the seal to that ballot box was taken by one of the justices when you went to dinner?—A. Yes, sir.

Q. And the key to the ballot box by another?—A. Yes, sir.

Q. And the ballot box itself was taken by another member of the board?—A. Yes, sir.

CARRYBELLE HANCOCK was recalled and testified for her on behalf of the contestee, as follows:

Examined by Mr. FELLOWS:

Q. I show you these returns of the election held on the fifth day of November, 1912, in this county, the envelopes, and ask you as these envelopes came in they were opened by you or your husband, Mr. Hancock?—A. Yes, sir.

Q. What was done with reference to tabulating the returns prior to the meeting of the board of county canvassers?

Mr. ADAMS. I object to that as incompetent, inadmissible, irrelevant, and immaterial, because there is no allegation in the answer of the contestee that would admit any such proof.

Mr. FELLOWS. I will state on the record, that I think it is in the answer of the contestee, but in taking of all the testimony in this case we have objected to the introduction of certain testimony, because in this contest when an objection was made, we were informed by the gentleman upon the other side that they proposed to ask for an amendment to the notice of contest, and they then stated that an amendment would be prepared and served upon us prior to the beginning of the taking of our proofs, but up to date there has been no amendment of the notice of contest served upon us, and we are practically through with our proofs. I do not desire to state that the proofs are closed, but as we desire to have a conference among counsel representing the contestee before that announcement is made. My impression is that this is the last witness now on the stand for the contestee. Certain testimony has been introduced upon the other side upon the theory that there would be an amendment to the notice of contest and we should have an opportunity to meet that amended notice of contest. It has not been served upon us yet. We deny the right of the contestant to amend his notice of contest, but if such is the practice we would, of course, have an opportunity to file an answer to its amended notice of contest. Some testimony has been introduced which was not objected to by us, because we understood that counsel for the contestant would claim the right to amend. Our proof is now practically closed, and no notice of an amendment of the notice of contest having been given we now and here move to strike out all the testimony that has been introduced by the contestant which is not within the original notice of contest filed.

Mr. ADAMS. I will state on the record that counsel has not stated the facts, as shown by the record, in regard to the statement of counsel for the contestant as to the amendment. The record will show what was said. As far as the amendment is concerned we will take care of that matter when before the proper court to take the matter up.

Mr. FELLOWS. We do not apprehend it is within the province of the committee which will hear this contest to permit an amendment to the notice of contest after we have closed our proofs. As we understand it now this is the last witness, although we do not desire to be foreclosed by that until we have had an opportunity to confer, myself and my associates.

Mr. ADAMS. If counsel for the contestee will remember what was said he will recollect that it was stated at the outset that any new matter that the contestant offered that you would be expected to meet it by your proofs, as we would ask an amendment accordingly when we got around to it.

Mr. FELLOWS. My information as to what the record contains comes from my associate, because that particular statement occurred at a meeting when I was not present. I am advised that it was stated by the contestant that if they desired to amend that it would be done before we commenced our proofs.

Mr. ADAMS. You are excusable for the mistake, if you were not present.

Mr. FELLOWS. The record will show for itself. We claim that an amendment to a pleading can not be made to the pleading after the other side has closed their proofs, and are thereby foreclosed from putting in any further testimony. The contestant has 10 days after our proofs are closed to put in further testimony on their side, and I made this statement for the purpose of making the record, as far as this particular question is concerned, squarely within the original answer filed and the original notice of contest.

(Last question read.)

A. I did the clerical work and copied the returns so the board of county canvassers could complete their work quickly.

Q. That was all done before they assembled?—A. Yes, sir.

Q. Is that the customary way since you have been, or your husband has been, county clerk?—A. Yes, sir.

Mr. ADAMS. I object to that as irrelevant and immaterial what the custom was, it is a question of what was done at this time, and I move to strike out the answer.

Cross-examination by Mr. ADAMS:

Q. I suppose you kept the returns correctly, or tried to, didn't you?—A. Yes, sir.

Q. Then you copied them into a book that you presented to the board of county canvassers?—A. Yes, sir.

Q. Was that the book from which you read the votes for the several candidates for Representative in Congress from the third congressional district yesterday afternoon?—A. Yes, sir.

Q. From each precinct and voting place in the county of Hillsdale?—A. Yes, sir.

Q. And the board of county canvassers canvassed that vote as made in this county of Hillsdale November 5, 1912, and compared your figures with the returns of the several election boards of Hillsdale County of the November 5, 1912, election?—A. Yes, sir.

Q. If there were any mistakes in the figures you made that you presented to the board of county canvassers, they corrected them?—A. Yes, sir.

Mr. FELLOWS. That is all of our witnesses.

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Edmund Claude Shields

4

CONTESTED ELECTION CASE OF CLAUDE S. CARNEY vs. JOHN M. C. SMITH

FROM THE
THIRD CONGRESSIONAL DISTRICT OF MICHIGAN.

STATEMENT OF FACTS.

John M. C. Smith is a resident of the City of Charlotte, Eaton County, Michigan, and was a candidate for Representative in Congress from the Third Congressional District of Michigan on the Republican ticket.

Claude S. Carney is a resident of the City of Kalamazoo, County of Kalamazoo, in the Third Congressional District of Michigan, and was a candidate for Representative in Congress in said district on the Democratic ticket.

Edward N. Dingley is a resident of the City of Kalamazoo, County of Kalamazoo, Michigan, and was a candidate for Representative in Congress in the Third Congressional District on the National Progressive ticket.

Levant L. Roger was a resident of said Third Congressional District and a candidate for Representative in Congress for the Third Congressional District of Michigan upon the Socialist party ticket.

The Third Congressional District of Michigan consists of the counties of Kalamazoo, Branch, Calhoun, Eaton and Hillsdale.

The election was held on the 5th day of November, 1912.

On the face of the returns, as determined by the State Board of Canvassers, on December 10th, 1912, John M. C. Smith received 14,609 votes in the entire district; Claude S. Carney received 14,482 votes in the entire district; Edward N. Dingley received 12,907 votes in the entire district.

The petition of Contestant was subscribed and sworn to on the 4th day of January, 1913.

Notice of contest was made and dated January 4th, 1913, and was served on John M. C. Smith January 8th, 1913.

Amendment to contestant's notice of contest was subscribed and sworn to the 22nd day of April, 1913, and notice of the same was mailed to Horace S. Maynard, attorney for the contestee, on the 22nd day of April, 1913, and was received by said attorney for the contestee on the 23rd day of April, 1913. That a copy of the petition and the proposed amendment was personally served on John M. C. Smith, the contestee, in Washington, on the 24th day of April, 1913.

The answer of the contestee was dated February 1st, 1913, but the said answer was not sworn to at any time.

The service of the answer was made February 3rd, 1913.

A stipulation concerning the taking of testimony before Joseph W. Stockwell, United States Commissioner and Notary Public, and as to the manner and form of taking the testimony and of transacting the same, was made on the 30th day of April, 1913. (R. 35).

A statement of facts as to the conditions relied upon by contestant in specific election precincts is not set forth in detail here, as it is believed that a detailed statement of the facts under each sub-head, as hereafter covered by the brief, will be more convenient to the Committee and to counsel. We do, however, wish briefly to call attention to the political conditions existing

in Michigan for some years past, and particularly to some of the counties in this district.

The State of Michigan has been overwhelmingly Republican for some years. There are many counties in the State in which there was in 1912 practically no Democratic enrollment, and but a very small proportion of the total vote of the counties being Democratic. The result was that in the vast majority of election precincts in the State, the entire election machinery was Republican. Not only the voters, but the election inspectors, challengers, canvassers, and county officers were entirely Republican. Out of this condition grew methods of conducting elections, making returns and issuing certificates, that were, to say the least, not in compliance with the election laws. A well known illustration of this condition was found in the contested election case of William J. McDonald vs. H. Olin Young, previously disposed of at this session of Congress. While the issue is not here before us as to the conduct of general elections throughout the State, the comments we have made can be applied to some of the counties in the Third Congressional District, and specifically to the county of Eaton, the home of John M. C. Smith, contestee, where we find, as a result of these conditions, that the Democrats were so few in comparison to the number of Republicans that the election machinery in many precincts was entirely in the hands of Republicans, and in all precincts the Republican influence is so completely shown by the record in this case that we feel warranted in saying that the most serious obstacle to any Democratic candidate lay in the fact of his having to receive his ballots, have them marked, to deposit them, have them counted and returned certified by Republicans, who, from their conduct, were more interested in the result of a Republican being elected than of giving Democrats the rights, privileges and opportunities which the election statutes particularly furnish them for protection.

A perusal of this record will show that in the County of Eaton the election officials in many instances knowingly and wilfully disregarded the statutes of Michigan which were enacted for the very purpose of safeguarding the interests of all candidates, and permitted ballots to be handed out by men to whom the election laws gave no authority whatsoever; permitted the ballots to be received by men other than particularly specified in the statutes; permitted ballots to be counted by men prohibited from counting by statute; adjourned and left ballot boxes unprotected during a period of adjournment; opened ballot boxes in the middle of the day and permitted men, not members of the Board of Election Inspectors, to count, in open violation of Michigan statute, which provides for the secrecy and integrity of the ballot; changed returns at the personal request of John M. C. Smith, contrary to a specific statute; delayed returns; totally disregarded the mandatory provisions of the election law as to assisting voters to vote; directly violated specific statute by soliciting votes in and around the booths of said election, and in some instances the inspectors of election themselves violated the specific statute against soliciting votes, and the conditions had apparently so hardened the election officials that when remonstrated with they would merely laugh and ask, "What are you going to do about it?"; counted ballots uninitialed, when not only the statute expressly prohibited it, but the Supreme Court of Michigan had passed on all fours on that proposition.

These conditions gave rise to situations which are not only suspicious, but stamp the conduct of men connected with the election as more than unfair.

As an instance we call attention to the conduct of John C. Nichols, who under oath, in this Record (p. 330) stated that he knew that the law of Michigan prohibited any person whose name appeared upon the ticket as any candidate from acting on the Board, yet he admitted that he took charge of the ballot box and deposited votes in the ballot box which he received from various voters. He directly admitted that he understood under the law of Michigan at that time that he had no right to do so as he was a candidate for the office of Circuit Court Commissioner at that time, and as such had to be a practicing lawyer.

It was this same Mr. Nichols who turns up in the middle of November, 1912, at the meeting of the Board of County Canvassers, claiming to be County Clerk. When he makes this claim, it is then discovered for the first time that the former County Clerk claimed to have resigned on the day before election, in order to make himself a legal candidate for the legislature. Before the Board of County Canvassers, this same Nichols is then claiming that he was

appointed County Clerk on the same day that Pray resigned, and yet his bond as County Clerk is not signed or acknowledged until the 14th day of November, nine days after election day.

It was the same Nichols who, when the reports from the townships of Carmel and Sunfield were before the County Board of Canvassers, claimed that the alleged discrepancies were not of sufficient importance to warrant sending for the Boards of Election Commissioners and objected that the expense was unnecessary, and yet on the second day later is found going as the personal representative of John M. C. Smith to one of the same boards and getting the affidavit (R. 334-335) which the contestee and his attorneys have endeavored to suppress. (R. 249-250).

The conduct of Postmaster Bera is just as questionable and particularly in his permitting communications and documents to pass through his office as mail without postage, (R. 334), and in tallying for the clerk of election and acting on the election board without taking any oath or having any right so to do; this being at his own request. (R. 244).

The vote by counties for the contestant and contestee was as follows:

Carney, Contestant,		Smith, Contestee.
3,796	Kalamazoo	3,288
2,226	Branch	2,156
3,828	Calhoun	3,966
2,390	Eaton	3,302
2,242	Hillsdale	1,897
<hr/> 14,482	Total	<hr/> 14,609

The first group of precincts which we wish to discuss in detail are Climax, Kalamazoo county; 3rd Ward, City of Charlotte, Eaton County; Township of Sunfield, Eaton County; 2nd Ward, City of Charlotte, Eaton County; Carmel township, Eaton County; Winsor township, Eaton County; 2nd precinct, 2nd Ward, Battle Creek, Calhoun County.

The second group discussed will be those precincts covered both by the petition and the answer, where the oath was not administered to voters who requested help.

FIRST GROUP.

I.

Township of Climax, County of Kalamazoo.

In the Township of Climax, on the face of the returns, John M. C. Smith was given 83 votes and Claude S. Carney 82 votes. (R. 155).

Contestant charged in his notice of contest (R. 11) that a large number of votes cast in this township were not canvassed, or considered.

The entire election board of this township was summoned by contentant to produce the ballot box containing the ballots cast at said election, and by agreement of the attorneys for contestee and contestant, the ballot box was opened in the presence of the parties and a recount of the ballots made, which showed that the actual vote cast in the precinct of Climax township was as follows. For Claude S. Carney 100, for John M. C. Smith 90. (R. 153-4-5).

The evidence is undisputed that a large roll of ballots, a large majority of which were Democrat ballots, were overlooked, either by design or mistake, on the part of the election board (R. 154) and by the corrected returns from this township Carney would gain 11 votes.

ARGUMENT.

No legal question can be raised as to the right and duty of the committee to accept the revised figures as to the township of Climax. The undisputed evidence shows that when the original figures were received all parties locally interested in the election immediately noticed that the figures could not be correct for that township, and when the contestant and contestee, with their attorneys, met to take testimony, there was present on that day the entire local board of election inspectors, together with the ballot box, all of which had been secured by proper legal process by the contestant.

The contestee, as represented there by Mr. Fellows and Mr. Frankhauser,

then entered into an agreement with Mr. Adams for the contestant and all consented to the opening of the ballot box and a recount of the votes, and that the votes therein contained could be counted and the result placed upon the record. (R. 153).

Original vote from this township for John M. C. Smith.....	83 votes
Original vote from this township for Claude S. Carney.....	82 votes
As corrected, vote for John M. C. Smith.....	90 votes
As corrected, vote for Claude S. Carney.....	100 votes
Add to John M. C. Smith	7 votes
Add to Claude S. Carney.....	18 votes
Net gain for Carney.....	11 votes.

II.

3rd Ward, City of Charlotte, Eaton County.

On the face of the returns, John M. C. Smith received 214 votes, Claude S. Carney 116 votes. (R. 62).

In this precinct the undisputed evidence is that the inspectors were guilty of actual fraud. That the frauds practiced by the election board were directed solely to secure the election of John M. C. Smith, in direct violation of the Michigan Election Laws.

Jackson Mosier testified that Evander Dunning and J. B. Dowdigan, both Republican inspectors of election, repeatedly went into the booth when voters were preparing their ballots, without requiring any of such voters to take the oath that said voters could not read English, or did not come within the other requirements of the law as to the oath. He specifically heard Mr. Dunning, who was then inspector of election, make suggestion to the voters to vote for John M. C. Smith. (R. 45). He further testified,

"We had some trouble about it. I told Mr. Dunning the soliciting of votes should be stopped. He said 'What are you going to do about it?' (R. 48). I heard the same suggestions made to all voters who asked for instructions. (R. 47). I should say seven or eight asked for instructions. (R. 46). Usually Dowdigan and Dunning went in together. (R. 44). I was not there all the time. I did not hear any suggestions made for any candidate other than for John M. C. Smith. (R. 45)."

J. B. Dowdigan admitted that he solicited one voter, whom he was assisting to vote, for John M. C. Smith (R. 421), and that he went into the booth with voters maybe three times. (R. 420).

Dunning admitted that he solicited a voter to vote for Smith. (R. 426).

Roy Munger (R. 428) testified that the only electioneering he could remember "was when an old man went in there and asked for instructions, and Mr. Dunning said something like this: "How about John M. C. Smith or J. M. C. Smith?" "

These facts show conclusively the activity of the election inspectors in this ward, and that they were actively engaged in promoting the election of Smith.

It is thus shown that the election board was in sympathy with the unlawful means used. This was a wholly Republican board, and the spirit with which they interpreted the election laws and their acquiescence in the illegal conduct of the election is so completely shown by the answer of Dunning to Mosier, "What are you going to do about it?" that it is unnecessary to further discuss the facts surrounding that particular precinct.

ARGUMENT.

Sec. 3643, Mich. Compiled Laws of 1897, being
Sec. 170 of Exhibit 67,

provides:

"It shall be unlawful for the board, or any of them, or any person in the polling room, or any compartment therewith connected, to persuade or to endeavor to persuade any person to vote for or against any particular candidate or party ticket."

The undisputed testimony concerning this precinct is that Mr. Dunning, a Republican inspector, suggested and solicited votes for John M. C. Smith, while acting as a member of that election board. Dowdigan admitted that he solicited one voter.

The soliciting of votes, the entering of the booths, was in direct and open violation of the specific and mandatory provisions of the statute. This kind of conduct and this particular section of the election law has been very forcibly construed in

Attorney General vs. McQuade, 94 Mich. 439,
in which case the court stated:

"These provisions of the law must be held mandatory or else the purpose of the law is defeated and the opportunities for fraud are increased rather than diminished. If an inspector or other person be permitted to enter the booths with the voters, the danger is far greater than under the old system, where there was some opportunity to see and detect fraud. Under this practice venal voting could be readily accomplished. The law is designed to secure absolute secrecy to the elector, and thus prevent all opportunity for corrupt practices. The law does not permit parties to profit by such frauds, though they may not have participated in the fraud.

The rule laid down by the text writers is as follows: 'When fraud on the part of the officials of election is established, the poll will not be rejected unless it shall prove to be impossible to purge it of the fraud. When the result at a poll as shown by the returns is false and fraudulent, and it is impossible to ascertain the actual vote from the other evidence in the case, the vote of such poll must be wholly rejected.' Paine Elections, Sec. 499; McCrary Elections, Secs. 190-192.' This rule is founded on good sense and is sustained by the authorities."

In the same case, on page 444, the court said:

"It is of far more consequence to the people of this state and to the stability of our form of government that these provisions should be held mandatory, than is the fact that occasionally the will of the people may be defeated by adhering to them, and rejecting the entire precinct so tainted with fraud. Whatever may have been the rule under former election laws, it is evident that under this statute no voter can be compelled to remove the secrecy of his ballot and state how he voted. If these provisions are held directory only, it follows that the intent of the people to pass a law to preserve the purity of elections is defeated and the statute instead provides sure means to protect and cover up corruption and venality. If the averments of the replication are maintained by proof, it follows that the receiving of votes of thirteen unregistered persons, and permitting persons to enter the booths with voters, contrary to law, tainted the vote of the whole precinct."

Sec. 3642 Mich. Compiled Laws of 1897, being
Paragraph 169 of Exhibit 67,

is as follows:

"When an elector shall make oath that he cannot read English, or that because of physical disability he cannot mark his ballot, or when such disability shall be made manifest to said inspectors, his ballot shall be marked for him in the presence of the challengers of each political party having a challenger at such voting place by an inspector designated by the board for that purpose, which marking shall be done in one of the booths."

The provisions of this section, relative to the marking of the ballots, are mandatory, and have been so held by the Michigan supreme court.

Attorney General vs. McQuade, 94 Mich. 439, at 442.
McQuade vs. Furgason, 91 Mich. 438.
Attorney General vs. May, 99 Mich. 545.

No language we could use could present a stronger argument than the language quoted from the Michigan supreme court, which is directly applicable to the conditions that existed in this voting precinct on November 5th, 1912.

The only conclusion to be reached from the undisputed testimony, the statutory provisions, and the language of the supreme court of Michigan is that the entire vote of this precinct must be thrown out and not considered.

The record shows conclusively that the soliciting of votes in this precinct was open and continuous during the whole day; that not only the entire board could hear the conversation and the soliciting, but that prospective voters in the voting place could hear, and must necessarily have been affected by finding the entire election board either actively engaged in soliciting votes for Smith, or at least tolerating it.

The condition in this precinct became so absolutely bad, and apparently the board were so hardened to it, that when complaint was made, one member of the board boldly stated, "What are you going to do about it?"

No man, no committee, no court can draw a fixed and determined line in such kind of conduct, and say that so many definite votes only were affected. That conduct was actual and active fraud, and it was that kind of conduct and that kind of a voting precinct that the Michigan supreme court condemned in the McQuade case, wherein that conduct was judicially determined to be sufficient to taint the whole vote of the precinct, and the whole vote should be rejected.

Original vote for Smith as shown by returns.....	214 votes
Original vote for Carney as shown by returns.....	116 votes
Loss to Smith.....	214 votes
Loss to Carney.....	116 votes
Net gain for Carney.....	98 votes.

III.

Sunfield Township, Eaton County.

In this township, the evidence shows that about twelve o'clock on the night of election, Mr. Mapes, one of the inspectors, made a motion that the board adjourn until the next morning and finish the count the next morning. The motion was carried. The board then adjourned, leaving the tally books, poll books and statement books all there in the voting place. The testimony is not specific that the ballot boxes were locked up. John Palmer (R. 72) one of the inspectors of election, then went home and went to bed. He was back at five o'clock the next morning, and found four gentlemen there, including the postmaster. He did not examine the ballots that had been counted in his absence. When they adjourned at night about one-half of the ballots had been counted. When Palmer returned at five o'clock all had been counted except fifteen to twenty-five ballots, and he did not examine those that had been counted in his absence.

Sylvester Franks, Village Marshal of the Village of Sunfield, saw Mr. Mapes and Mr. Hager, two members of the election board, in a barber shop in Sunfield about twelve o'clock at night. This shop was twenty-five or thirty rods from the voting place. He heard Mr. Mapes say they had adjourned. The reason of being at the barber shop was that they were receiving general election returns from other communities at that place. The ballot boxes were left in a room and the witness carried a key to it. There was also another key kept in a little tin box by the side of a door, so that people could get in and give a fire alarm.

Dennis A. Hager, a witness for the contestee, and one of the inspectors of election for the township of Sunfield, a Republican, testified that the board took an adjournment about one o'clock on the morning of the 6th, when about half of the ballots had been counted. The box was not sealed but the ballot boxes were left there, and all went out and turned out the lights. With Mr. Mapes, he went over to the barber shop, and later between one and two o'clock went back and commenced counting again. Mr. Bera, the Postmaster, came in and helped keep the tally and count the votes. (R. 221).

D. W. Knapp, one of the clerks of election at Sunfield, testified that Mr. Bera, the Republican postmaster, came in about a half hour before the counting was completed, and helped keep tally on Mr. Mapes tally book. (R. 249).

Mr. Bera, himself, (Republican postmaster) testified and admitted that he

tallied for the clerk. He claimed that the clerk appeared to be fatigued, and Bera asked the clerk to let him (Bera) tally. The clerk left after Bera began to tally. He also testified:

"I was not sworn there as an officer of the election. I was not sworn in by anybody. I did not take any oath as clerk of that election." (R. 243).

The election laws in Michigan provide that the supervisor, two justices of the peace whose term of office should first expire, and the township clerk of each township should be the inspectors of election. In this precinct, on November 5th, each inspector designated by the statute was present, and there was no vacancy. Inspector J. H. Palmer was supervisor, Inspector Frank H. Bacon, Justice of the Peace, Dennis A. Hager, Justice of the Peace, and Inspector H. H. Mapes, Township Clerk, and D. W. Knapp was chosen as provided by the statute as second clerk. (R. 67-68).

The board then proceeded to appoint what they called an "instructor" of election, and appointed one Albert Sayer to act as this so-called "instructor," and caused him to take the following oath:

"State of Michigan
County of Eaton, ss.

I do solemnly swear that I will support the Constitution of the United States, and the constitution of this State, and that I will faithfully discharge the duties of the office of instructor of his election, held on Tuesday, the 5th day of November, 1912.

ALBERT SAYER.

Taken, subscribed and sworn to before me
the 5th day of November, 1912.

FRANK H. BACON,
Justice of the Peace."

The arrangement of the booths in this voting precinct was such that the board sat at a table on one side of the room, and on the east side of the booths. That Sayer as "instructor" was given ballots by the board and he took a position on the west side of the booths, and out of sight of each and every member of the board, and handed out the ballots to the voters as they came in.

Therefore, in this precinct, the ballots were in possession of an individual not a member of the board, not authorized in any way whatsoever by any law of Michigan to have in his hands any ballot except the one he voted. Yet he was not only given the ballots, but he was given the custody and care of them at a point which placed him beyond the sight of any member of the board. (R. 69-70).

Sayer, when sworn as a witness by Contestee John M. C. Smith, admitted these conditions, (R. 443) testifying, among other things:

"The voting booths were along here, and I was on one side and the board was on the other. I delivered a ballot to each voter that day. I did not go into the booth with any voter, but I went to the door to show them. I remained at the polls from early in the morning until twelve o'clock, and until five o'clock. I delivered each ballot that was voted." (R. 433-434).

"There were four booths attached together. They were about five or six feet high. I could not see the rest of the board. When I was handing out the ballots, the other members of the board were performing their duties on the east side of the booths and I could not see what they were doing. I was the only one who was attempting to perform any duty on the west side of the booths." (R. 435).

"I remember of two men calling me up in the booth and asking me some questions about the ballots, about how to mark them, and I told them how to mark them. I saw one man mark his ballot outside before he went into the booth. He marked it at my table there." (R. 437).

The above witness, Albert Sayer, was a witness for John M. C. Smith, the contestee, and the present sitting member.

In this precinct John M. C. Smith received 174 votes, Carney 104.

Our contention is in this precinct that the entire vote should be thrown out. This would make Carney gain 70.

ARGUMENT.

The action of the board of election inspectors in this district in appointing one Albert Sayer as a so-called "instructor" and delivering to him all the blank ballots, and his distributing them one by one to the prospective voters during the entire time that this precinct was open to receive ballots, was a flagrant, open, specific violation of the election laws of this State.

Mich. Compiled Laws of 1897, Sec. 3640, being
Section 167 of Exhibit 67,

provides.

"No ballot shall be distributed by any person other than one of the inspectors of election, nor in any place except within the railing of the voting room to electors about to vote, and no ballot which has not the initials of a member of the board of election, written by such member on the back thereof, shall be placed in the ballot box."

No more express violation of a mandatory provision of the election law of Michigan could be conceived than the violation in this voting precinct. Not only the express provisions of the above section of the law were violated, but the entire spirit back of the election laws of Michigan that provide for secrecy and the integrity of the ballot was ignored. A voter, and all the voters of a precinct have the absolute right to protection from an official provided for by the election laws, and to entrust such power, knowledge or discretion to an absolute interloper into the election machinery cannot and will not be tolerated for an instant.

The supreme court of the State of Michigan has spoken with force and absolute finality on this exact statute and condition, in the following case:

Attorney General ex rel. McCall vs. Kirby, 120 Mich. 592, which was a quo warranto proceeding by the Attorney General at the relation of McCall against Kirby to determine the title to the office of Prosecuting Attorney for the County of Gratiot. The lower court entered judgment for respondent. Relator brought error and got reversal. The relator and respondent were candidates for the office of Prosecuting Attorney at the election held on November 8, 1898, in the County of Gratiot. The county board of canvassers returned that the relator received 2,991 votes and the respondent 3,014. The relator claimed that the returns from the township of Elba should be thrown out. If this were done the relator would be elected.

The arrangement of the booths was such that the prospective voter passed through a gate and went down an aisle on the left side of the booths. At the farther end of the aisle was a table upon which the ballots were kept. The voter there received a ballot from one Kerr, and then went into a booth, marked his ballot, passed through the booth, coming out on the further side from the point of entrance, passed by a table where the board were sitting, handed his ballot to an inspector and passed out a second gate.

In addition to all the officers provided by the statute, the inspectors of election chose this Kerr as an "instructor." Kerr took the oath, a copy of which was in the record. The inspectors after having marked the ballots, as provided by law, gave them to Kerr, who took them over and placed them on the table first mentioned above. He took them as wanted. It was his custom to ask voters as they entered if they knew how to vote, and if they desired instruction, he took the ballot, sometimes holding it against the wall, and gave instructions. He had free access to every voter who came in. It is clearly established that he talked with them while in the booths with the doors open and himself standing in the door of the booth. He was, while talking with the electors, a good deal of the time out of the sight of the inspectors and challengers. Several testified that they could hear him talking to the electors but could not hear what he said. Several voters testified that he showed them on the ballot where to vote for respondent if they desired to. There is no evidence of attempting to influence voters unless this

be so considered. No protest was made to the action of Kerr during the election, and it appears that Mr. Kerr had filled this position in other elections.

"Grant, C. J. (after stating the facts.) Manifestly, the election law was wholly ignored in the appointment of Mr. Kerr, in intrusting the ballots to him, and permitting him to have free access to the electors after they had passed into the voting precinct, and into the booths themselves. It is urged that the inspectors of election acted in good faith, and supposed they had the right to appoint a man as an instructor of election. It is difficult to understand how intelligent men should reach this conclusion. The law makes no such provision, but makes it the clear duty of one inspector to keep possession of the ballots, and to hand them to the voters, after another inspector has opened the package, and still another has put his initials upon them. It is due to the members of the election board to say that there is no evidence that they acted from corrupt motives. If, however, this conduct can be sustained, and the plain provisions of the law ignored, rascals can very readily make the same plea, and it would be difficult to expose their rascality. These provisions of the law have been held mandatory. Attorney General vs. McQuade, 94 Mich. 439; Attorney General vs. Stillson, 108 Mich. 419. By a reference to the latter case, on page 421, it will appear that the interpreter, an officer provided by the act, was stationed very near to, and in plain sight of, the inspectors, and talked with the voters, as they came in, in a foreign language. It does not appear that there was more evidence of fraud in that case than in this. That case differs from this only in two particulars. First, that the conversation between the interpreter and the voters was not in the English language, as it was in this; and, second, that the "instructor" as he was called in this case, had a better opportunity to secretly influence electors than did the interpreter in that. If these provisions are mandatory,—and we have so held,—they cannot be evaded by showing that the parties acted in good faith and that voters were not influenced. The law was intended to prevent just such transactions and chances to influence voters, and courts cannot fritter them away by permitting jurors to find that there was no fraud and that voters were not unduly influenced.

The judgment must be set aside, and one entered for the relator.
The other Justices concurred."

This case is also cited in
79 N. W. 1009,
90 A. S. 82, note,
15 Cyc. 365.

It was cited and approved by the Michigan Supreme Court in
People ex rel. Anderson vs. Rinehart, 161 Mich. 585 at 587,
where the court said, in reference to said case:

"The vote of a township was excluded because an unofficial person was appointed instructor to distribute ballots who was allowed access to voters even after they had entered the booth, and this was held notwithstanding the fact that the parties all acted in good faith and the absence of proof that any one was unduly influenced."

No language we can use can add to the force of the above opinion of the supreme court of Michigan, and unless the plain statutory provision and the emphatic decision of the supreme court are ignored, the entire vote of the township of Sunfield must be excluded.

The original vote for Smith as certified was.....	174 votes
The original vote for Carney as certified was.....	104 votes
Deducted from Smith total vote.....	174 votes
Deducted from Carney total vote.....	104 votes
Net gain to Carney.....	70 votes.

IV.

2nd Ward, City of Charlotte, Eaton County.

In this ward, one John C. Nichols, who was a candidate on the Republican ticket for the office of Circuit Court Commissioner, and a practicing lawyer, and who, later in the year, to wit: November 14, 1912, then for the first time made public his claim that he had been appointed County Clerk on the 5th of November, 1912, without taking any oath of any kind, or pretending to have any authority to act, took charge of the ballot box, received and deposited ballots from the voters, from an hour to an hour and a half. (Testimony of F. M. Overmyer, R. 50; Testimony of E. D. Davids, R. 93-4).

Mr. Nichols himself, sworn as a witness for the contestee (R. 330) admitted that he was an attorney and that he knew that the law of Michigan prohibited any person whose name appeared upon the ticket as a candidate for any office from acting on the election board. He admitted that he took charge of the ballot box, and deposited ballots in the ballot box which he received from various voters. He admitted that he knew that as a candidate for office he did not have any business to receive ballots, and knew that to be the law when he went into the second ward and deposited ballots in the ballot box. (R. 331). When Mr. Nichols was receiving these ballots and depositing them, the inspectors at that voting place were on the opposite side of the booth, and the inspectors could not see what Mr. Nichols was doing when he was depositing and receiving those ballots. (R. 52). The booths were about seven feet high, four in number, attached together consecutively, covering about twelve feet in length, and while Mr. Nichols was receiving and depositing these ballots he was alone where he was doing that work, and the inspectors of election were on the other side of those booths.

In this ward John M. C. Smith, on the face of the returns, received 161 votes; Carney 107.

Mr. Nichols was both receiving and depositing the ballots from the electors and was alone when he was doing that work, and the other inspectors were on the other side of the booth. (R. 52).

In this precinct for a portion of the time when Mr. Knowles was at dinner, Mr. Hamilton, one of the inspectors, handed ballots to the people who came in and wanted them, then went to the other side of the booths to receive the ballot, and thus left the ballots that Mr. Knowles had marked on the table where he placed them. Mr. Hamilton then went on the other side of the booths and received ballots and went and deposited them in the ballot box, and there was nobody especially in charge of the ballots that were left on this table when he went over there to deposit ballots in the ballot box (R. 369-70), and the only inference to be drawn from this testimony is that when Mr. Hamilton was where the ballots were that were to be handed out, the ballot box was on the opposite side of the booths alone and unprotected. Therefore, from this testimony, (R. 369-370) the law was alternately violated in first leaving the initialed ballots alone and unprotected, and next leaving the ballot box alone and unprotected, with the obstruction of the booths between.

This same condition existed when Mr. Knowles was alone acting as inspector during parts of the day. (R. 386). Mr. Knowles passed out the ballots and also received them, getting to the ballot box by going down one side of the booths and crossing to the ballot box on the south side, then going around the booths to the west end. (R. 386).

ARGUMENT.

In this precinct, we find John C. Nichols, without taking any oath of any kind, or pretending to have any authority to act as such, taking charge of the ballot box; not only receiving ballots from the voters, but also depositing them in the ballot box. He was not an official of the election board, he was not sworn to perform any duty, and was the rankest kind of an interloper in this particular precinct. His activity in behalf of Mr. Smith, as shown by his presence in various places and in various capacities, not only preceding the election and on election day, but in this contest, shows that his actions bespeak him more than an interloper and warrant the charge that his activities were the result of specific design. His appointment as County Clerk, his statement before the County Board of Canvassers as to Carmel

and Sunfield townships, his activity in getting the affidavit above referred to, and the peculiar phraseology of that affidavit, his giving out of false returns, his presence at different voting precincts on election day, all stamp him and his actions as being just the kind of a man and just the kind of conditions that the election laws try to provide against.

Michigan Compiled Laws of 1897, Sec. 3640
being Paragraph 167 of Exhibit 67,

provides:

"No ballot shall be distributed by any person other than one of the inspectors of election, nor in any place except within the railing of the voting room, to electors about to vote, and no ballot which has not the initials of a member of the board of election written by such member on the back thereof shall be placed in the ballot box."

Mich. Compiled Laws of 1897, Sec. 3636, being
Paragraph 163 of Exhibit 67,

among other things, provides:

"Before leaving the booth, the elector shall fold his ballot, so that no part of the face thereof shall be exposed, and so that the initials of the inspector shall be on the outside thereof, and on leaving the booth shall at once deliver, in public view, such ballot to the inspector designated to receive the same, who shall thereupon announce audibly the name of the elector offering the same and the number of the ballot, and shall ascertain by comparison of the number of the ballot with the number of the ballot given such elector as shown by the poll list, whether the ballot presented is the same one given to such elector, and if it is the same, the inspector shall tear off the corner of the ballot, where perforated, containing the number, and shall then, in the presence of the elector and the board of inspectors, deposit the same in the ballot box without opening, and if it is not the same ballot given said elector, it shall be rejected."

Mich. Compiled Laws of 1897, Sec. 3612, being
Paragraph 139 of Exhibit 67,

provides:

"That at all elections at which any Presidential Elector, Member of Congress, Member of the Legislature, State or County officer, or Circuit Judge is to be elected, or any amendments to the constitution, the supervisor, two Justices of the Peace not holding the office of Supervisor or Township Clerk, whose term of office will first expire, and the Township Clerk of each township, and the assessor, if there be one, an alderman of each ward in a city, shall be the inspectors of election, provided, that in all voting precincts where by special enactment provisions exist for designating inspectors of election, said provisions are not to be superseded, but such officers shall be the inspectors of election under this act; And provided further, That no person shall act as such inspector, who is a candidate for any office to be elected by ballot, at said election."

We therefore find that Mr. Nichols, as a candidate for election to the office of Circuit Court Commissioner at that election, was specifically and absolutely prohibited from acting as an inspector. We find that Mr. Nichols was not a member of the election board of that precinct by virtue of any law, nor was he chosen as an individual by virtue of some local member being absent. He was purely an individual who took it upon himself to inject himself into the election proceedings, and to perform a function that was specifically confined to one of the inspectors of that election, viz: receiving the ballot, announcing the name and number and depositing the same in a ballot box.

We find that in the City of Charlotte, under the charter there existing, that if the last above quoted election law did not apply as to the organization of the board, that by the charter aldermen of the City of Charlotte were to act

as members of the board, and Mr. Nichols was not an alderman.

With these conditions existing, the actions of Mr. Nichols, and the acquiescence of the board and the permitting by the board of him to act in the capacity in which he did act, brings this precinct plainly within the decision of the Supreme Court of the State of Michigan in

Attorney General ex rel. McCall vs. Kirby, 120 Mich. 592, which decision is set forth in full above.

Mr. Nichols was not even in as favorable or explainable a situation as was the "instructor" in the Kirby case, but Mr. Nichols went even farther, because he was a lawyer at that time and expressly stated on his examination as a witness in this contest that he was a lawyer then, a candidate for office, and knew when he went into the second ward and deposited ballots in the ballot box the specific provisions of the law prohibited him from acting in that capacity, or any other capacity at that voting precinct.

Under the provisions of the election law quoted and the decision of the Michigan Supreme Court, this precinct must be thrown aside and the vote declared void.

In the original returns Mr. Smith received.....	161 votes
In the original returns Mr. Carney received.....	107 votes
Deduct from the votes for Mr. Smith.....	161 votes
Deduct from the votes for Mr. Carney.....	107 votes
Making a net gain to Mr. Carney of.....	54 votes.

It is not sufficient within the statute or the decisions of Michigan to merely throw out the number of votes which Mr. Nichols claims he received and deposited, for the same argument as presented before in this brief; the entire voting precinct was tainted with fraud, and it is impossible to purge that precinct to the extent of the fraud, as it is impossible to determine it, and therefore the whole precinct must be thrown out, as the testimony shows that Mr. Nichols was depositing ballots from an hour to an hour and a half. (R. 50, Overmyer).

V.

Carmel Township, Eaton County.

In the township of Carmel about two o'clock in the afternoon the election board opened the ballot box and poured the ballots out upon the table and reclosed the ballot box and went on receiving ballots and putting them into the ballot box, and as to the ballots turned out on the table, he board turned them over to Cortez Cushing and Mr. Clements, who proceeded to count the ballots in the same room where the election was being held, while the election board went ahead and conducted the election. (R. 105-6-7).

Gordon Griffin testified that he was Supervisor of the township of Carmel, and chairman of the election board (R. 283), and when the board ordered that two o'clock count, he knew that was not the law, yet Griffin unlocked the box, emptied the box on the table, put the box on the floor, locked it again and commenced voting.

On the face of the returns, Smith had 137 votes, Carney 82.

ARGUMENT.

The election laws of Michigan, specifically fixing the time when the count shall be made is found in

Mich. Compiled Laws of 1897, Sec. 3646, being Paragraph 173 of Exhibit 67,

which is in part:

"Immediately on closing the polls, the board shall proceed to canvass the votes. Such canvass shall be public and shall commence by a comparison of the poll lists and a correction of any mistakes that may be found therein until they shall be found or made to agree. The box shall then be opened and the whole number of ballots counted. If the ballots shall be in excess of the number of electors voting according to the poll lists they shall be replaced in the box and one of the inspectors shall publicly draw out and destroy so many ballots

therefrom unopened as shall be equal to such excess. They shall first select and count the straight tickets and give the number to each candidate voted for on the straight ticket. All other tickets shall be laid on the table and counted in regular order in such subdivisions thereof as may be convenient for a prompt and careful determination of the result of such election. * * *."

The action of the township board in Carmel township in opening the ballot box at two o'clock in the afternoon, and emptying the ballots on the table, and permitting the ballots to be counted by men not members of the board, was a violation of each and every provision of the statute. This action on the part of the board violated every provision for the secrecy and integrity of the ballot of the voter.

Mich. Compiled Laws of 1897, Sec. 3618, being Paragraph 145 of Exhibit 67,

provides:

"Before opening the poll, the ballot box shall be examined, and the contents, if any, removed therefrom; it shall then be locked, and the key thereof delivered to one of the inspectors, to be designated by the board. The said box shall not be opened during the election except as provided by law in case of adjournments."

Therefore, the action of the board in permitting this count was in direct violation of the above mandatory provision. The board had not adjourned at the time the count was being made, and even if they had, the direct and mandatory provisions of the statutes governing adjournments were not complied with. There is no provision of the election laws permitting an adjournment except in rural communities. The only section covering this proposition is

Mich. Compiled Laws of 1897, Sec. 3616, being Paragraph 143 of Exhibit 67,

which is as follows:

"On the day of election the polls thereof shall be open at seven o'clock in the forenoon, or as soon thereafter as may be, and shall be continued open until five o'clock in the afternoon of the same day and no longer; but in townships the board may adjourn the polls at twelve o'clock, noon, for one hour, in its discretion. The inspectors shall cause proclamation to be made upon opening the polls and cause proclamation to be made of the closing of the polls, one hour, thirty minutes and fifteen minutes, respectively, before closing thereof. Provided, That in counties where all the voting precincts in the county use voting machines, the polls in such counties shall be continued open until seven p. m. of the same day and no longer."

The board in this case did not make any adjournment within the provisions of the above section, but even if they did, they could not take out the ballots and count them or permit anyone to remove ballots, handle the same or count them until the polls were finally closed for the day. These provisions are specifically set forth in

Michigan Compiled Laws of 1897, Sec. 3637, being Paragraph 164 of Exhibit 67,

which is as follows.

"At each adjournment of the poll, the clerks shall, in the presence of the inspectors, compare their respective poll lists, compute and set down the number of votes and in case the same do not agree shall, under the direction of the board, correct all mistakes that may be discovered, until such poll lists shall be made in all respects to correspond."

And

**Mich. Compiled Laws of 1897, Sec. 3638, being
Paragraph 165 of Exhibit 67,**

"The ballot box shall then be opened and the poll list placed therein, the box locked, and at least five minutes before the removal of the same a piece of leather or canvas so placed as to extend from the opening in the lid of said ballot box to the key hole in such a manner as to completely cover both such holes, shall be placed thereon, and the same securely fastened thereon with sealing wax stamped with the official election seal of such township or ward, such piece of leather or canvas and the sealing wax to be so arranged as to render it impossible to open either of said holes without breaking said seal. The key shall then be delivered to one of the inspectors, the box to another, and the seal to another. Such box shall not be opened nor the seal broken until the box has been publicly exposed at least five minutes before the reopening of the poll."

And

**Mich. Compiled Laws of 1897, Sec. 3639, being
Paragraph 166 of Exhibit 67.**

"The inspector having the key shall keep it in his possession, and deliver it again to the board at the next opening of the poll, and the inspector having the box shall carefully keep it without opening or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly deliver it in that state to the board of inspectors at the next opening of the poll, when the seal shall be broken and the box opened, the poll lists taken out, and the box again locked."

If such a method of counting is sanctioned, the provisions of the election law for the securing of the secrecy of the ballot, and the handling of the ballots only by officials of the election board, and the checking of mistakes or errors, are rendered absolutely useless. These provisions must be mandatory.

By analagous reasoning and application, every case cited in this brief would be unquestioned authority for holding these steps mandatory.

Our statute for the protection of the secrecy of the ballot is so stringent that by

**Mich. Compiled Laws of 1897, Sec. 3636, being
Paragraph 163 of Exhibit 67,**

if any one elector shall show his ballot, or any part thereof, to any person other than one lawfully assisting him in the preparation thereof, after the same shall have been marked, so as to disclose any part of the face thereof, such ballot shall not be received or deposited in the ballot box.

And yet, in this case, a boxful of ballots was emptied out on the table, exposed to two men not members of the board, and the point where they were so counted was so situated that all electors voting after they began counting had to pass within four feet of where they were and directly by them and in such a way that every one of them could have seen some number of said ballots and how they were voted.

In this precinct the original returns gave Mr. Smith.....	137 votes
In this precinct the original returns gave Mr. Carney.....	82 votes
Deduct from the total vote of Smith.....	137 votes
Deduct from the total vote of Carney.....	82 votes
Net gain to Carney.....	55 votes.

V.

Winsor Township, Eaton County.

The election law of Michigan provides that the ballots, when deposited in the ballot box after being counted, shall be preserved therein until the next election at which the boxes are to be used.

The township board of Winsor township certified the count of ballots after the election of November 5, 1912, and there was nothing to indicate a condition which later developed.

Under the laws of Michigan for the year 1913, there was a general election held on the first Monday in April, that being the first election following the general election of November 5, 1912.

When the ballot box of Winsor township was opened, there were found therein the ballots, and the same ballots which had been voted and counted at the election of November 5, 1912. The ballots did not have any initials upon them, as required by the election laws of Michigan. The fact that none of those ballots were initialed had been kept a secret, and the condition of the ballots was not discovered, so far as the contestant had been able to determine, until the ballot box was opened on the 7th day of April, 1913.

The contestant first learned of this condition of the ballots on April 14th, 1913. On April 18th he made a personal investigation by going to the township of Winsor and getting information as to facts. On the 22nd day of April, 1913, he drew, signed and swore to a petition for an amendment to his notice of contest. A copy of the petition and amendment to notice of contest was placed in the mail on the same day, viz. the 22nd day of April, 1913, addressed to Horace S. Maynard, attorney for contestee, and a like copy personally served on John M. C. Smith, the contestee, in Washington, D. C., on the 24th day of April, 1913. (R. 213).

That due diligence was shown by the contestant in making his amendment, after acquiring knowledge of the facts, is shown in Record 212-213.

The testimony of S. J. Vanderbeck (R. 176-177) shows that he was a member of the board of election inspectors and initialed all the ballots and they were all initialed above the perforated line. That none of the ballots were initialed below the perforated line. When the ballots were counted, there were no initials on any of the ballots.

This testimony is corroborated by W. J. Bakeman (R. 170), Ray Burnett (R. 174), F. L. Smith (R. 179), who constituted all the members of the election board in the township of Winsor, at the November 5, 1912, election.

ARGUMENT.

In this township there can be but one conclusion arrived at, as to what disposition should be made of the votes there cast.

Mich. Compinel Laws of 1897, Sec. 3632, being
Paragraph 159 of Exhibit 67,

provides:

"At the opening of the polls after the organization of and in the presence of the board of inspectors, one of the inspectors shall open the packages of ballots in such a manner as to preserve the seal intact. He shall then deliver to any one of the inspectors fifty of the ballots, and shall place the pencils for marking the ballots in the booths. Any inspector initialing ballots shall at once proceed to write his initials in ink or with lead or indelible pencil on the back of the ballot directly below the perforated line, so that the same shall not be torn off when the number is torn off by the inspector, in his ordinary handwriting and without any distinguishing mark of any kind. As each successive voter calls for a ballot, one of the inspectors shall deliver to him the first signed of the fifty ballots, and as the supply of ballots in the hands of the inspectors shall decrease, additional ballots shall be signed by an inspector, so that at least twenty-five ballots so signed shall be at all times in the hands of the inspector delivering the ballots to the electors."

The entire controversy in reation to this township has been thoroughly covered both as to the initialing and the history of the legislation and the decisions of the Michigan supreme court upon it.

As to distribution of the ballots,

Mich. Compile dLaws of 1897, Sec. 3640, being
Paragraph 167 of Exhibit 67,

provides:

"No ballot shall be distributed by any person other than one of the

inspectors of election, nor in any place except within the railing of the voting room, to electors about to vote and no ballot which has not the initials of a member of the board of election written by such member on the back thereof shall be placed in the ballot box."

Mich. Compiled Laws of 1897, Sec. 3646, being Paragraph 173 of Exhibit 67,

is as follows:

"Immediately on closing the polls, the board shall proceed to canvass the votes. Such canvass shall be public and shall commence by a comparison of the poll lists and a correction of any mistakes that may be found therein until they shall be found or made to agree. The box shall then be opened and the whole number of ballots counted. If the ballots shall be in excess of the number of the electors voting according to the poll lists they shall be replaced in the box and one of the inspectors shall publicly draw out and destroy so many ballots therefrom unopened as shall be equal to such excess. They shall first select and count the straight tickets, and give the number to each candidate voted for on the straight ticket. All other tickets shall be laid on the table and counted in regular order in such subdivisions thereof as may be convenient for a prompt and careful determination of the result of such election. In the canvass of the votes, any ballot which is not endorsed with the initials of the inspector as provided in this act, and any ballot which shall bear any distinguishing mark or mutilation shall be void, and shall not be counted, and any ballot, or any part of a ballot, from which it is impossible to determine the elector's choice of candidates shall be void as to the candidate or candidates thereby affected; Provided, however, That all such ballots shall be preserved, marked by the inspectors "not counted" and kept separate from the others by being tied or held in one package by a rubber band or otherwise."

We therefore find that the proposition of initialing the ballots is considered of such vital importance that express provision is made concerning it:

1. As to the ballot being initialed before the delivery of the ballots to the inspector, so that he cannot distribute a ballot without these initials upon it;
2. No ballot without the initials shall be placed in the box;
3. After the election is over, if any ballots are found without the initials, they are absolutely void.

The entire history of the provisions of initialing and the decisions of the Michigan Supreme Court upon those provisions are so clearly and thoroughly covered in the case of

People ex rel. Anderson vs. Rinehart, 161 Mich. 585,
that we take the liberty of quoting the case in full.

"Hooker, J. The prosecuting attorney for the county of Cass filed an information on behalf of Anderson against Rinehart to try the title of these persons to the office of county clerk in said county; Rinehart being in possession under a certificate of election.

The case must turn upon the disposition to be made of the ballots cast in the township of Calvin, all of which should be excluded or all counted. If excluded, relator will have a majority of 88 in the county. If counted, respondent was elected by 137 votes. The alleged defect in the ballots is that the initials of the inspector were placed on the perforated corners of the ballots, and were all torn off by the inspector after he received them from the electors and before depositing them in the box. The statute involved in this case is section 22, Act No. 55, Pub. Acts 1905:

'Sec. 22. At the opening of the polls, after the organization of, and in the presence of the board of inspectors, one of the inspectors shall open the packages of ballots in such a manner as to preserve the seal intact. He shall then deliver to one of the inspectors, to be designated by the board, fifty of the ballots, and shall place the pencils for marking the ballots in the booths. The inspector so designated shall at once proceed to write his initials in ink on the lower left hand corner of

the back of each of said ballots, but not upon the perforated corner, in his ordinary handwriting, and without any distinguishing mark of any kind. As each successive voter calls for a ballot, another one of the inspectors shall deliver to him the first signed of the fifty ballots, and as the supply of ballots in the hands of the inspectors shall decrease, additional ballots shall be signed by the same inspector, so that at least twenty-five ballots so signed shall be at all times in the hands of the inspector delivering the ballots to the elector.'

It is contended on behalf of the respondent that the provision regarding initials should be held to be directory, rather than mandatory, and that a failure to strictly comply with it would not require the exclusion of the informal ballots, and we are cited to the case of *Horning vs. Board of Canvassers of Saginaw Co.*, 119 Mich. 51 (77 N. W. 446), in support of the claim. Under the law in force at that time, the poll clerks were required to write their initials in ink on the upper left-hand corner of the back of each of the ballots, etc. Another section required that 'any ballot which is not endorsed with the initials of the poll clerks as provided in this act shall be void and shall not be counted.' We held in that case that the ballots voted (all being endorsed in a different corner) should be counted. This case was decided in December, 1898, under the act of 1891 (Act No. 190, Pub. Acts 1891, I Comp. Laws, Sec. 3612, et seq). Several other provisions of that act have been held mandatory and informal ballots rejected. Thus in *Attorney General vs. McQuade*, 94 Mich. 439 (53 N. W. 944) the non-compliance with the requirement that the voter must go alone into the booth and there prepare his ballot concealed from the view of all persons, and fold it so that the face should be concealed, and the initials exposed to view and non-compliance with the provisions relating to assistance to illiterate persons in marking their ballots, made the exclusion of ballots necessary.

In *Attorney General vs. May*, 99 Mich. 539 (58 N. W. 483, 25 L. R. A. 325) we held the same where assistance was rendered to a voter, who had not previously taken the statutory oath. In *Attorney General vs. Stillson*, 108 Mich. 419 (66 N. W. 388), we held that the vote of an entire township must be excluded for the reason that an interpreter duly sworn was allowed to remain within the railing at a voting precinct, and to mingle and talk freely with voters after receiving and before marking their ballots, such voters not having requested the assistance of an interpreter. Again, in *Attorney General vs. Kirby*, 120 Mich. 592 (79 N. W. 1009), the vote of a township was excluded because an unofficial person was appointed "instructor" to distribute ballots, who was allowed access to voters even after they had entered the booth, and this was held notwithstanding the fact that the parties all acted in good faith and the absence of proof that anyone was unduly influenced. See, also, *De Gaw vs. Fitzsimmons*, 124 Mich. 511 (83 N. W. 282). Subsequently, and in 1905, and presumably with the full knowledge of the *Horning* case, the legislature amended the act by expressly prohibiting the use of the perforated corner for initials. In view of these cases, and the subsequent legislation, we must hold the provision mandatory, and the vote void.

It is urged that voters should not be disfranchised by the carelessness or fraud of inspectors, and we are cited to many cases where courts have refused to exclude votes for election irregularities. Courts are always reluctant to deprive electors of their votes, or to do violence to the expressed will of the public, but these regulations are made in furtherance of a design to protect electors in the exercise of their electoral privileges. In the case of *McQuade*, supra, it was said by Mr. Justice Grant:

"These provisions of the law must be held mandatory, or else the purpose of the law is defeated, and the opportunities for fraud are increased rather than diminished. If an inspector or other person be permitted to enter the booths with the voters, the danger is far greater than under the old system, where there was some opportunity to see and detect fraud. Under this practice, venal voting could be readily accomplished. The law is designed to secure absolute

secrecy to the elector, and thus prevent all opportunity for corrupt practices. The law does not permit parties to profit by such frauds, though they may not have participated in the fraud. The rule laid down by the text writers is as follows:

"When fraud on the part of the officers of election is established, the poll will not be rejected, unless it shall prove to be impossible to purge it of the fraud. When the result of a poll, as shown by the returns, is false and fraudulent, and it is impossible to ascertain the actual vote from the other evidence in the case, the vote of such poll must be wholly rejected." Paine on Elections, Sec. 499; McCrary on Elections, Sec. 190, 192.

"This rule is founded in good sense and is sustained by the authorities."

We said in the case of Stillson, supra:

"We have frequently held that electors are not to be deprived of the result of their votes by the mere mistakes of election officers, when such mistakes do not indicate that the result has been changed thereby, and many things may occur that can be treated as irregularities. See *People vs. Avery*, 102 Mich. 572 (61 N. W. 4), and authorities cited. On the other hand, where fraud appears upon the part of the inspectors, the voter must sometimes be deprived of his vote. *Attorney General vs. McQuade*, 94 Mich. 439 (53 N. W. 944). And this must always be the case where mandatory provisions are disregarded, if the result would be thereby changed."

Continuing upon the subject of the constitutionality of the law which is attacked in this case as it was there, we said much in the last mentioned case that can as well be read there as to repeat it here. We held these laws within the powers expressly conferred by the constitution, although they might require some sacrifice by the individual for the public good. The statute expressly provides that such ballots as these shall be neither placed in the box nor counted, and we have no alternative but to apply the law.

The judgment of the circuit court is reversed and a judgment of ouster entered against the respondent, and in favor of the relator.

Ostrander, Moore, McAlvay, and Brooke, J. J., concurred."

Under the above statutory provisions and the decisions quoted, the entire vote of this precinct must be rejected.

The original vote as shown by the returns was, for Smith.....	174 votes
The original vote as shown by the returns was, for Carney.....	92 votes
Deduct from the total vote for Smith.....	174 votes
Deduct from the total vote for Carney.....	92 votes
Net gain for Carney.....	82 votes.

VII.

2nd Precinct, 2nd Ward, Battle Creek, Calhoun County.

The board of election inspectors' returns gave on their face to John M. C. Smith 31 votes and to Claude S. Carney 23 votes. No petition was filed before the board of county canvassers for a recount of any kind. (Testimony of George W. Schneider, R. 138.)

County Clerk, Ray Hart, claimed before the board of county canvassers that the returns from this precinct were not correct. The board on their own motion caused the ballot boxes to be brought before them. No recount of any kind was attempted. Ray E. Hart, County Celrk, under the direction of the canvassing board, changed the returns by adding to the vote of John M. C. Smith 66 votes, so that his total vote then read 97, and by adding to the vote of Claude S. Carney 38 votes so that the total vote of Claude S. Carney read 61. From the figures that were on the back of the rolls of ballots in the box the board of county canvassers caused the changes to be made. (R. 139). This occurred on the 19th day of November.

Schneider further testified there was no data in the box unless we use the figures that were on the rolls of tickets which we did use in correcting the retuurns. (R. 145-136).

When the board discovered that the Michigan statutes forbade the removal of any tickets from the ballot box by the board of county canvassers except upon a petition for a recount, at the request of Congressman John M. C. Smith, the board of county canvassers caused the ballot box to be brought before them a second time. John M. C. Smith was present, John C. Davis, the Republican Congressional Committeeman from Battle Creek, George Huggett, an attorney for John M. C. Smith from Charlotte, and the City Clerk, a Republican of the City of Battle Creek. (R. 141), Claude S. Carney, the Democratic candidate for Congress was not present. No notice of any kind was given to Mr. Carney that the ballot box would be produced before the board. (R. 141).

"On this second meeting we found a blotter that was in the box. It was not signed by anybody. There was no tally sheet or statement book found in the box. We canvassed the vote by the figures found upon the blotter." (R. 143).

"This blotter was a piece of paper perhaps ten inches square which one of the election inspectors claimed he made while they were counting the ballots. We did not find this blotter or piece of paper on the 13th when we opened the ballot box. The board of county canvassers made their returns according to the figures upon the blotter, 97 for John M. C. Smith, and 61 for Claude S. Carney, and not according to the figures which were originally returned and filed with the county clerk and the Judge of Probate by the board of election inspectors of said precinct." (R. 143—Schneider Chairman of the Board).

The ballot box in question in said second ward, second precinct of the City of Battle Creek was brought before the Notary taking testimony in this contest. (R. 447).

Testimony of Ray Hart, County Clerk:

"The box bore evidence of having been roughly handled for some purpose. The lid was jambed down to quite an extent so that the lid could be raised enough to place papers in the box. (R. 450). The entire lid is crushed down. That one edge which was ridged is bent down. I should say that it is by means of blows if my opinion is worth anything. It could be done in various ways probably. The lid could be raised about one-half inch without disturbing the seal in front. The piece of paper that the inspectors used the second time was a single sheet of paper. I think it could be put into the ballot box without unlocking or breaking the seal." (R. 451, Ray E. Hart, County Clerk, Calhoun County.)

This paper from which they corrected their returns was not signed by any member of the board.

ARGUMENT.

After the votes are counted by the board of election inspectors, the ballots are to be disposed of as follows:

Mich. Compiled Laws of 1897, Sec. 3647, being Paragraph 174 of Exhibit 67.

"After the ballots are counted they shall, together with one tally-sheet, be placed in the ballot box which shall be securely sealed in such a manner that it cannot be opened without breaking such seal. The ballot box shall then be placed in charge of the township or city clerk, but the keys of said ballot box shall be held by the chairman of the board and the election seal in the hands of one of the other inspectors of election."

The result is to be declared as follows.

**Mich. Compiled Laws of 1897, Sec. 3648, being
Paragraph 175 of Exhibit 67,**

"Immediately after the count of the tickets or ballots has been completed, the result and the number of votes received by each candidate or person on the ticket shall be publicly declared by one of the inspectors. The inspectors shall then prepare a statement of the result in duplicate showing the whole number of votes cast for each office, the names of the persons for whom such votes were given and the number each person received, in which statements the whole number of votes given for each office, and the number given for each person shall be written out in words at length. Such duplicate statements, when certified by the inspectors and duly signed shall be delivered to the township or city clerk, and shall by said clerk be, within twenty-four hours after the result is declared, delivered in person or immediately forwarded by registered mail, one copy to the board of county canvassers in care of the judge or register of probate, and the other, together with one of the original tally-sheets, to the county clerk, which said statements and tally-sheets shall be placed in separate envelopes and sealed by said inspectors before their delivery to the township or city clerk."

The duties of the board of county canvassers are set forth in

**Mich. Compiled Laws of 1897, Sec. 3665, being
Paragraph 239 of Exhibit 67.**

"The said board shall then proceed without delay to canvass the return of votes cast for all candidates for office voted for and all other questions voted on at said election, according to the returns filed in the office of the county clerk by the several boards of election inspectors of the various voting precincts in the county, and the returns or tally sheets filed with the board of canvassers by the central counting board in counties where a central counting board is provided for counting the ballots cast in said county or any part thereof in lieu of their being counted by the election inspectors of the voting districts. If it shall be found upon the convening of said board of canvassers that the returns from any of the boards of election inspectors of the several election districts, or the returns of such central counting board are missing, incomplete, or incorrect, or for any other reason it is found necessary, then said board of county canvassers shall have power to adjourn from day to day until said returns shall have been procured or corrected. Said board of canvassers are hereby empowered to summon the person or persons having the boxes containing the ballots cast at said election and the keys and seals of said boxes, or having such returns or the poll books or tally sheets used and made at such elections, to bring said boxes, seals, keys, returns, poll books and tally sheets before said board and said board of canvassers are authorized to open said boxes and take therefrom any books or papers bearing upon the count and return of the election inspectors of such election districts or the returns of such central counting board, but they shall not remove or mark the ballots therein. Said board of canvassers may summon such election inspectors, or central counting board, before them, and require them to make correct returns in case, in its judgment, after examining such returns, poll books or tally sheets, the returns already made are incorrect or incomplete, and they shall canvass the votes from the corrected returns. When the examination of such papers is completed the same shall be returned to the ballot boxes or delivered to the persons entitled by law to the same, and the boxes shall be locked and sealed and delivered to the legal custodians thereof. When said canvass shall have been finished, the said board of county canvassers shall prepare a statement setting forth their findings in the premises, and giving in detail the number of ballots cast for each candidate and the result of the votes cast on all other questions voted on at said election. They shall certify thereto, under their hands, and the seal of the circuit court of the county. It shall also be the duty of said board to declare the result

of the election for county officers and members of the legislature, when the county alone constitutes one or more senatorial or representative districts, and to publish said result and a statement of votes cast, within thirty days after said election is held, in at least two newspapers printed and circulating in said county."

The action of the board of county canvassers in changing the final returns because of a paper produced by one Christian is in absolute violation of the provisions of this law. It was not a paper required by the statute; it was not kept by him in accordance with the provisions of the statute; it was not in the box when the county board of canvassers first opened the box, and was only found by them in the box at their second meeting, on the 19th of November, after the box had been so tampered with that Mr. Hart, the County Clerk, a witness for the contestee, admitted that the lid was jambed down to quite an extent, so that the lid could be raised enough to place papers in the box. As to the preparation of that paper and when it was done, there is absolutely no legal testimony. The examination of the witness Christian, who produced the paper, (R. 465-466) and of Henry Christian (R. 460-461) impresses one with the firm belief that the paper was not prepared at the time, in the manner, nor for the purpose as he testified.

We do not overlook the fact that the board of election inspectors of this precinct went through the formality of signing a second return, but we contend this act on the part of the board of inspectors was a mere nullity, and added nothing to the legality of the so-called second return.

The first return was regular upon its face. There was no clerical error patent upon the face of the return. The figures as originally returned by the board of election inspectors were arbitrarily raised in each instance. The conduct of the board of election inspectors and of the board of county canvassers, making this second or substituted return, was a mere nullity and was so decided in the case of

Roemer vs. Canvassers, 90 Mich. 27.

In the case cited the board of canvassers convened on the 7th of November, for the purpose of canvassing the returns. Canvasser Erhard, who was also one of the inspectors of election for the precinct in question, represented to the board that a mistake had been made by the inspectors in stating the number of votes cast for relator and Deimel respectively, and produced a so-called corrected return, signed by the inspectors. The new return, it appears was prepared nearly a week after the first return had been filed with the city clerk.

The board of canvassers proceeded to appoint a committee to examine the tally sheets of the district in question, to be found in the boxes in the custody of the police department, with instructions to report their findings to the board. The committee proceeded to investigate and made a report, stating:

"We believe the inspectors discovered an error, but we believe the canvassing board is powerless to receive oral statements in relation thereto."

The report further stated that as a result of their investigation, upon opening the ballot box and tabulating, the vote cast, for relator was 352, and for Diemel 168. This report the board of canvassers refused to adopt, and proceeded to canvass the vote as reported in the second or substituted return. The tally sheets had been produced, and it was claimed that they show the substantial accuracy of the 2nd return.

Among other things, the court said.

"The method adopted was confusing, well calculated to result in mistakes similar to those claimed to be shown in this case and not in harmony with the method prescribed by the statute. We are not able to say, from the tally sheet itself, that the second return is correct. It does appear, however, to indicate that there was an error in the original returns. We are all satisfied, however, that the canvassing board had no right to accept or act upon the second return of the inspectors. That such return was a nullity. When the inspectors had completed their count, executed and delivered the returns, their legal powers

ended, and any attempt on the part of the inspectors to change or modify such original returns in any particular, involving any other than a mere clerical duty, was clearly beyond their powers."

So it seems to be well settled that the action of the board of county canvassers in accepting this second or substituted return, in the manner and method that they did, was illegal and directly contrary to the case above cited, and the circumstances under which this condition was brought about was open to suspicion, to say the least. The change was made at the personal request of John M. C. Smith, the contestee, the Republican Congressional Committeeman, John C. Davis, of Battle Creek, George Huggett, an attorney from Charlotte, representing the contestee, (R. 140) the Republican City Clerk of the City of Battle Creek; and surrounded by these influences, and in the presence of these gentlemen, and without giving the contestant, Claude C. Carney, any notice of the contemplated proceedings, or any opportunity to be present, either in person or by attorney, the ballot boxes were opened, the substituted return made, from a piece of paper which was unsigned, was no part of the returns, was not in the ballot box on November 13, when the boxes were first before the board of county canvassers, and we submit that the whole proceeding is stamped with suspicion from beginning to end, and surely in the face of the decision above cited from the Michigan supreme court, in the case of Roemer vs. Canvassers, no court, no tribunal and no committee, with the facts before it, could do otherwise than to set aside this unwarranted proceeding and to cause the vote to be canvassed according to the original return.

The primary law of Michigan requires and provides the same safeguards as the general election laws, and an attempt on the part of the board of canvassers to take the testimony of the primary election officials as to the condition of the books and to compare the poll list with the enrollment was wholly unauthorized.

Ritze vs. Iron County Canvassers, 172 Mich. 423.

The substituted returns in this precinct gave Mr. Smith.....	97 votes
The substituted returns in this precinct gave Mr. Carney.....	61 votes
The original return gave John M. C. Smith.....	31 votes
The original return gave to Claude S. Carney.....	23 votes
Deduct from Smith.....	66 votes.
Deduct from Carney.....	38 votes.
Net gain to Carney.....	28 votes.

GROUP II.

This group includes all districts or voting precincts where instructions were given as to voting, or ballots were marked without the oath being administered as required by statute to the voter, and excludes all voting precincts specifically covered above.

Generally speaking, this group includes all the districts named in contestants petition, and not individually treated as above.

The same ground existed in a number of the voting precincts disposed of above, but in this group attention is called only to those which are generally treated in the record, and where no other violation of the election laws has been proven.

ARGUMENT.

The returns for the precincts in this group cannot be as definitely disposed of by the decisions of the Michigan supreme court as have been the districts heretofore treated separately. The question was squarely raised in the case of

Attorney General ex rel. Raynolds vs. May, 99 Mich. 568.

But the precincts in that case which were discussed were really covered as dictum because the results of the precincts as claimed by the court were disposed of by the verdict of the jury inferentially, as the number of ballots in dispute would not have affected the result as found in answer to certain specific questions left to the jury.

In the dissenting opinion of Justice McGrath (who was a Democratic mem-

ber of the court) a strong argument is presented for holding the provisions merely directory, he stating.

"The board, officers of the law, charged with control of the place, and with the instructions and direction of the voter, participated in the work. Supervisors and marshals, there by federal authority, charged with the duty of supervision, participated in the work. Each and every one of these officers was there commissioned to protect, instruct and direct the voter. No challenge was made by any person. Relator's specification alleges that this was done with the approval of the chairman of the board of election inspectors. To these officers, and to these officers only, did voters expose (?) their ballots. Is it not monstrous to say that, under these circumstances, the voter and this entire precinct, composed of 1,156 qualified electors, shall be disfranchised? The law should not be so construed as to make the machinery of election a snare to entrap the unsuspecting voter.

It may be urged that the voter is charged with knowledge of the law; but is he charged with knowledge of the personnel of the inspectors, or of those designated to assist him? Inspectors of election are not either uniformed or badged. Is each voter bound to suspect men there by authority, acting in the presence of the power that creates the actors, and to inquire by what authority? Of whom should the voter inquire, if not of the very men who were engaged in and directing this work? These men, whether inspectors, supervisors or marshals, were there acting in the capacity of instructors or assistants, in the presence of the board of inspectors, the very power under the law that should designate and create assistance or instructors, and were recognized by all as having authority. Were they not, under all the authorities, de facto assistants and instructors? Is an elector to be disfranchised because one of these de facto officers looked upon his ballot? If respondent be ousted from his office, who shall say that no witnesses sworn by him while acting as clerk of the circuit court for the county of Wayne can be prosecuted for perjury, or that every subpoena or summons signed by him is a nullity, because he was not legally elected to the office of county clerk? Suppose that no assistant be actually designated by the board, but that one should act off the day in the presence of the board; would the absence of an express designation disfranchise the voter? McCrary, Elect, Secs. 105, 214, 216."

pp. 568-9.

The court, however, in the prevailing opinion, did not adopt that language and did not apply it, but strongly inferred that the number of votes so illegally instructed would not, under the facts shown, necessarily taint the vote of the whole district, and it would not taint the whole ballot if the jury were able to determine the correct ballot, as under such circumstances it would not destroy the presumption of the correctness of the other ballots. But, as said, this question, as it relates to the present case, is of but little moment, for the jury were able to determine the number of illegal votes put into the boxes in the various districts. And the court, in the same case in the prevailing opinion, on pages 555-556, did adopt the following rule:

"We now come to the other portion of the charge, where, in substance, the jury were directed that they should take the illegal votes from the total vote proportionately, according to the entire vote returned for each candidate in that district. In this we think the court, under well settled rules, was entirely correct. It is a fair way to arrive at results. The rule is based upon the proposition that the illegal votes have gone into the boxes without the fault of either candidate. If these illegal votes can be separated from the legal ones, so that the number is substantially ascertained, then the poll is too large by exactly that number, and they must be cast out."

If this rule is adopted in the settlement of this contest, then the result of applying the rule as to the actual illegal votes of that nature shown in the entire record will not affect the standing of either party to this contest.

Should the Committee and House of Representatives follow the statutes and decisions of the Supreme Court of Michigan in this contest?

We are aware that the House of Representatives is the sole judge of the election and qualification of its members, however, in the great number of contests which have been made before the House of Representatives, certain definite and fixed rules of proceeding and rules of interpretation of election proceedings have been so uniformly adopted that we feel warranted in saying that the procedure of the Committee and House in this particular case should be governed by precedents already established.

We are fully warranted in taking as a precedent a Michigan contest made by a Michigan Democrat against a Michigan Republican, in which the election laws of Michigan, as construed by the Michigan supreme court, were accepted by the House as the governing principle of that contest.

In the contest of Belknap vs. Richardson, in the 43rd Congress, a digest of which is reported in

Howell's Digest of Contested Election Cases from 1789 to 1901, the question arose in the contest over ballots containing distinguishing marks prohibited by the statute and votes cast by inmates of the Soldiers' Home, located in the district. The supreme court had passed on both of these questions and the Committee followed the rulings of the court on all the points of law.

Same case reported in

2 Hinds' Precedents of the House of Representatives, p. 518, Sec. 1042.

RECAPITULATION OF VOTES.

	Smith	Gain	Loss	Carney	Gain	Loss
Original Total Vote	14609			14482		
Climax Township, Kalamazoo County.						
Original vote—For Smith,	83					
For Carney	82					
Corrected vote						
by consent For Smith	90					
For Carney	100					
Gain For Smith	7	7				
For Carney	18				18	
3rd Ward, City of Charlotte Eaton County.						
Original Vote—For Smith	214					
For Carney	116					
All should be thrown out						
Loss For Smith	214		214			
For Carney	116					116
Sunfield, Eaton County.						
Original Vote—For Smith	174					
For Carney	104					
All should be rejected.						
Loss For Smith	174		174			
For Carney	104					104
2nd Ward, City of Charlotte, Eaton County						
Original Vote—For Smith	161					
For Carney	107					
All should be rejected.						
Loss For Smith	161		161			
For Carney	107					107
Carmel Township, Eaton County,						
Original Vote—For Smith	137					
For Carney	82					
All should be rejected						
Loss For Smith	137		137			
For Carney	82					82
Winsor Township, Eaton County						
Original Vote—For Smith	174					
For Carney	92					
All should be thrown out.						
Loss For Smith	174		174			
For Carney	92					92
2nd Precinct, 2nd Ward, City of Battle Creek, Calhoun County						
1st return For Smith	31					
For Carney	23					
Changed returns For Smith	97					
For Carney	61					
As last figures were included in in face of returns there should be deducted						
From Smith	66		66			
From Carney	38					38
		7	926		18	539
			7			18
Deduct	919		919	521		521
	13690			13961		
Total corrected vote for Carney.....				13961		
Total corrected vote for Smith				13690		
Pulrality for Carney					271	

This contest therefore stands before the House and this Committee, as follows:

- (a). The direct and specific violation of mandatory provisions of the election laws of Michigan, sufficient, when the votes so effected are deducted, to give to contestant, Claude S. Carney, the majority of the legal votes cast at said election.
- (b). We have shown that the provisions of the election laws, upon which we rely to change the result of the legal votes cast, have been expressly construed by the supreme court of Michigan favorable to our contention here.
- (c). That in a contest before the House of Representatives of the United States, in a Michigan contest, the precedent has been established for the House to follow the statutes of Michigan and the rules laid down by the Michigan supreme court interpreting those statutes.

I. We therefore submit that following the statutes, supreme court decisions and precedents set forth in a, b, and c, John M. C. Smith is not entitled to a seat in the present House of Representatives, based upon the election of November 5th, 1912.

II. But that Claude S. Carney is entitled to a seat in the House of Representatives, based upon the election of November 5th, 1912.

Dated August 25th, 1913.

CLAUDE S. CARNEY,
Contestant in Pro Per.
EDWARD C. SHIELDS,
JOHN W. ADAMS,
Attorneys.

[4]

[Horace S

Maynard]

CONTESTED ELECTION CASE
OF
CLAUDE S. CARNEY vs. JOHN M. C. SMITH
FROM THE
THIRD CONGRESSIONAL DISTRICT OF MICHIGAN.

BRIEF FOR CONTESTEE.

PRELIMINARY STATEMENT.

In replying to Contestant's brief we shall endeavor to avoid statements of a personal character, as much as is possible, and still do justice to our client's case, believing that two men aspiring to so high a position should carry on this controversy in such a dignified manner as is in harmony with the exalted desire they both have to represent this large and almost distinguished district in Congress.

Contestant has made statements in his brief which are surprisingly inaccurate, from our viewpoint, and has made charges against Contestee and even his attorneys, which might justify sharp rejoinder, or even angry retort; but we have long since learned that assertion is not argument, and that a mere statement that certain conditions exist do not establish such facts. We have no other ambition in this brief than to make such substantial and honest claims and arguments as are warranted by the facts disclosed by the Record, and justified by rules of law and precedent; and should we grow animated and earnest in such argument, it will be because we feel that we are absolutely right in our contention, to the effect, that to unseat Contestee would be an act of positive injustice, for reasons which we will respectfully assign as we proceed; and if we challenge the accuracy of Contestant's statements, it should not be construed as a claim by us that he has purposely misstated, but only a contention on our part that our view, though contrary to his, is correct.

We say this because we cannot hardly bring ourselves to believe that Contestant, though apparently very anxious to win this contest, would intentionally try to mislead this committee or the house. It is to the Record to which we will always appeal to show that we are right and he is wrong on the various points of difference arising between us.

Contestant, by this contest is asking to have done for him what the voters of the Third Congressional District of Michigan failed to do at the election in November, 1912, viz., give him a seat in the National Congress. We do not make this statement offensively, but make it because we believe that when this Record is examined by those whose duty it will be to examine it, the impression will grow stronger and stronger, that the statement with which we began this paragraph is substantially, if not absolutely, accurate.

We hasten to say, however, that though the political party with which Contestant is connected, has a large majority in this Congress, and if partisanship were to reign and control in the decision of this contest, it would be idle for Contestee to spend his time and money in defending his seat, yet we firmly believe that the sentiment of partisanship will cut absolutely no figure in determining the merits of this contest. In other words we have a strong and abiding faith not only in the ability, but in the rectitude of the men who will sit in judgment on this matter. Men who have been honored by the various communities from which they came, by an election to Con-

gress will be fair enough, just enough and great enough to decide this controversy on its absolute merits; will so far comprehend and appreciate their solemn duty in a matter of this character, as to forget while passing upon the merits, that they are of the same political party as Contestant; will forget that any rivalry or competition exists between political parties, and will render a decision here which will be right and just, irrespective of whether a Democrat or a Republican shall suffer from such decision.

To state it in a few words, we believe that no one who will be called upon to pass upon this contest, will have any other desire, any other ambition, than to seat the man who was honestly and actually elected by the voters of this district; seat the man who actually received the most votes honestly cast and honestly counted.

Having said this much as to our belief in the fair treatment which Contestee will receive from the hands of his political opponents, we now make this observation that when this case is fully and fairly examined, Contestant will be sorely disappointed, if he believes that the fact of his party being in the majority in Congress, will aid him one particle in securing the seat which Contestee now holds; for the time and the day have gone by, if it ever was, when blind partisanship rules in matters of this character; the time has gone by, if it ever existed, when the mere "counting of noses" settles contested election cases in the National Congress. We expect to have just as fair treatment in the consideration of this case, and we expect the final action will be based upon just as high and dignified grounds, as though it were a lawsuit, where honorable men acting under the pressure and restraint of an oath, render an honest and just verdict.

We have wondered whether Contestant may not be relying somewhat upon party partiality in this matter, owing to an incident of which we will now speak. The Record shows that Contestant has two attorneys, viz., Hon. John W. Adams of Kalamazoo, Michigan, and Hon. E. C. Shields, of Howell, Michigan. For some reason not made plainly apparent, Mr. Shields is nominally an attorney here, but actually has taken no part in this case so far as we have seen. He was not present at any of the hearings, though frequent hearings were held in taking this testimony, covering all five of the counties of this Congressional District. Contestant admits this. (R., 214.)

Contestant is himself an able attorney, and he certainly has an able assistant in the person of Hon. John W. Adams; and we think we may say without indelicacy that the Third Congressional District contains some other most excellent lawyers who would have been pleased to assist Contestant, yet for some reason he has seen fit to associate (in name) Hon. E. C. Shields, with him in this case, whose residence is outside.

Can it be possible, that Mr. Shields has been secured (in name) because of his being chairman of the Democratic State Central Committee? Understand, we concede Mr. Shields is a good lawyer, and that Contestant had a perfect right to associate him, but having connected his name with the case we will simply observe that Contestant could have absolved himself from this suspicion by simply having Mr. Shields actually assist. As it is, we think we have the right to suggest the query as to whether or not Mr. Shields' connection with this case is not partially at least, for the purpose of making what might be called a party impression—to show the Elections Committee and the House that he, Contestant, had the backing of the highest officers in his party organization in the state of Michigan.

Understand now, we do not make this as a charge and we sincerely hope it is not true that Contestant has associated Mr. Shields with him for the purposes hinted at; we hope it is not true that Contestant expects that Mr. Shields' party influence is to be interposed in his behalf before this committee and before the House; but we submit that we have a right to call attention to this extraordinary situation, viz., where one attorney of record has in no wise shown any active participation in the Contestant's case, but who happens to be as stated before, a high officer in the Democratic organization of Michigan.

True, Contestant says that he has consulted with Mr. Shields, but in all the wearisome days of taking this large volume of testimony Mr. Shields has taken no part whatever.

Contestant complains in his brief that Michigan and the Third Congressional District is so strongly Republican that Democrats have not been successful in elections; complains that Democrats must receive their ballots from Republican hands and that the boards of inspectors and canvassers are made up largely of Republicans.

The conditions which have existed in Michigan in the last fifteen years are no different in the main than has existed in nearly all of the states in the Union north of what is called the Mason and Dixon line. For some reason the people have adhered to the Republican party throughout the northern states generally during that period, we presume for the reason that they were satisfied with existing conditions and satisfied with the mode and manner in which the government was carried on by that party; but the people of Michigan and the Third Congressional District, and the people in other states have had no hesitation to rebuke the party in power, if they thought it needed rebuking and promptly changed such majorities when election came around.

Somethin over twenty years ago Michigan had a Democratic legislature which redistricted congressional districts of the state. It is no secret, but a matter of history, that our Democratic friends did at that time what they called a gerrymander—that is, they intended to make certain districts which were already Republican, very strongly Republican, and other districts which were already Democratic, very strongly Democratic; in other words, (we do not speak of it disrespectfully) the Democrats intended to so district the state that they would get some representation in the National Congress.

The Third District was intended to be made strongly Republican, while the Second District was intended to be made strongly Democratic; but as an illustration of how politicians "appoint" and the voters "disappoint" soon after this, and at the election of 1896 we beheld the anomalous situation that the Third District had elected a Democrat (Congressman Todd) and the Second District had elected a Republican (General Spaulding). We speak of this to show that the voters of Michigan are not so hide-bound in party politics but what they can break away from party ties to vote as they think.

We have now a most excellent Democratic governor in the State of Michigan, who carried the election by a large majority in November, 1912.

It is true that the Third Congressional District has not elected a Democratic congressman in seventeen years, but that is true in many congressional districts of Michigan and of the northern states generally, during that time. The Republican party has been overwhelmingly in the ascendancy until last fall, when the people split up in factions and broke down, pretty generally in the United States, the powerful reign of the Republican party.

Now as a matter of fact in this district the Contestee was elected in 1910 by between six and seven thousand majority over his next highest opponent. We all know what occurred in the election of 1912. Col. Roosevelt divided the party and led off for himself a most powerful and numerous wing thereof, under the name of the Bull Moose or National Progressive Party. The candidate for that party in this district, Hon. Edward N. Dingley, received 12,907 votes—only about seven hundred less than Contestee and only about five hundred and seventy-five less than Contestant; had it not been for this Progressive diversion from the Republican ranks, Contestee would have had a large majority of the votes cast for Mr. Dingley, and there really would have been nothing to the contest of Carney vs Smith, either at the polls or in Congress.

One would think by the reading of Contestant's "Statement" (page 2), that Democrats were never allowed to handle the ballots in Michigan, and in the Third Congressional District, and really have nothing to do with the elections except to stand by and watch Republicans do the counting and returning of the votes. The fact is that the character of our citizenship is such here in this district that the minority party is given generous representation on such boards, and even where no law requires it, election boards and canvassing boards are more generally bi-partisan than they are partisan. Boards of county canvassers so far as our observations have gone, though perhaps there is no law requiring it, have a Democrat or two upon them; at least this is true in that portion of the district where Contestant makes substantially all his complaint in regard to this election; in other words,

an examination of his brief shows that with the exception of a few votes, his whole complaint is based upon the manner in which the elections were conducted in five precincts of Eaton County, the home of Contestee.

Now just a word of a preliminary character in this connection. The vote of a congressman is under the laws of Michigan canvassed three times. First, by the board of election inspectors where the votes were cast; second, before the board of county canvassers to whom the returns are sent by the board of election inspectors; and third, by the state canvassing board to whom the returns are sent by the board of county canvassers. It will be seen that these votes run three distinct gauntlets.

In the County of Eaton where as stated, Contestant makes his principal complaint, the county canvassing board was made up of three men—Brown, Hawkins and Little. Two of these were Democrats and one (Brown) was a Republican.

Record 358.

In the County of Calhoun where complaint is made by Contestant of one precinct, the chairman of the board of county canvassers, George W. Schneider, was a Democrat. We think the Record fairly shows that he was really the man in control there, and to a great extent managed and directed the movements of the board. True, it is claimed that the board of county canvassers have very limited authority and cannot do much except act upon the returns as furnished them by the inspectors. This is not literally true as we shall show before we get through; but we have spoken of this condition in these two counties because of the moral aspects of the situation. The Contestant met with the board of county canvassers of Eaton County and filed some protests which were overruled by the board, a majority of which were his own partisans. He also appeared before the board of Calhoun County and made his objections in relation to correcting the most obvious error, from the Battle Creek precinct, but was unanimously overruled by the board of county canvassers which had upon it a very able and very honest Democratic chairman. So it will be seen that his own party friends overruled his protestations against the canvassing of certain votes of which we will speak of specifically, later. We will also call attention as we go along to the fact that in two of the townships where Contestant makes his most grievous complaint, Sunfield and Carmel in Eaton County, Democrats conducted and assisted in conducting the election and the counts.

We are surprised at some of the statements made by Contestant in his brief under the heading, "Statement of Facts." On page 2 of his brief about the middle, in enumerating what he claims to be wrongs inflicted upon him, he says: "Changed returns at the personal request of John M. C. Smith, contrary to a specific statute." We submit that this statement is wholly baseless and without foundation. If John M. C. Smith personally requested any change of returns, then it was the duty of Contestant to point out the page of the Record where any such thing as that appears. The only possible ground for such a statement will be found on page 141 of the Record in the testimony of George W. Schneider, chairman of the board of canvassers for the County of Calhoun. He was testifying about how the board came to send for the ballot box in the second precinct of the second ward of Battle Creek at the time the board of county canvassers was in session at Marshall. The following is the evidence:

He testified in substance that Mr. Smith and other of his friends were there and someone, he could not tell who, requested that the ballot box be brought over from Battle Creek, and in substance, the returns counted. He thinks this request was made by a representative of Congressman Smith; but where is the evidence anywhere in the Record that any returns were changed at the request of Contestee? If by reading all there is of it, it be concluded that no such statement was justified, no such accusation against Contestee was justified, would it not be well to watch closely all of Contestant's statements and claims in his brief to ascertain whether such statements and claims were borne out by the Record. This is a fair sample of the kind and character of a showing which Contestant has made, and is, making to gain this seat in Congress. We challenge the Record to the statement that there is no spot or place in it where Congressman Smith

did anything dishonestly, suggested anything to be done which was irregular or questionable, but he simply stood there to receive the verdict of the people as it was honestly expressed. We ask again what basis is there for Contestant to make any such accusation?

On page 3 of Contestant's brief under the "Statement of Facts," he accuses Contestee and his attorneys of endeavoring to suppress a certain affidavit. This statement is absolutely without foundation, and when an investigation of the matter is made, it is really ludicrous. This matter related to the township of Sunfield. One Knapp had testified that an affidavit had been prepared for him to sign and that he signed it. One John C. Nichols testified that he could not find the affidavit. He was directed to look for it, and the next morning when the session of taking evidence was resumed, he having made a search therefor, produced the affidavit and it was put in evidence.

The fact is, instead of trying to conceal the affidavit, Contestee and his attorneys went to extra pains to find it, and themselves voluntarily presented it at the hearing and had it read into the Record.

Record, Page 334.

But please read the affidavit and then say what earthly motive could anyone have, either Contestee, or his counsel, to try to conceal this paper. It threw no light upon anything and had absolutely no connection or bearing in favor of Contestant's contention. The charge is almost laughable were it not for the fact that Contestant makes it apparently seriously, and with the hope that the House will consider that incident a very important and deciding feature of this contest. Other statements made by Contestant in his "Statement of Facts" are equally surprising and certainly not supported by the evidence or the facts in the case. Are they not made with the hope that assertions will be accepted in the place of argument, and claimed facts will be acted upon in place of the actual facts? Do they not show an effort to prejudice, and not to convince; an effort to befog the issue rather than to give light to this Committee and the House?

We want to say in this connection that we hesitate to ask the Committee and the House to read this prolix Record; made prolix as examination will, show largely by the Contestant; made unnecessarily prolix by the introduction of matter by counsel for Contestant, entirely foreign to the case.

This Record contains about 600 closely printed pages of small type matter, when it should not have contained no more than half of that number; and while we have this thought in mind and to accentuate the blame we lay upon Contestant for making this Record so long, we wish to call attention to the cross-examination of John C. Nichols by Contestant's attorney. Mr. Nichols began his evidence on page 304 of the Record and closed on page 358. There were about 5 pages of direct-examination and more than 50 pages of cross-examination. If this cross-examination of Mr. Nichols had, as it proceeded, developed anything new in favor of the Contestant and against the Contestee; had thrown any light on the transaction to aid anyone in determining the issues, it would not be open to the criticism we are making; but we ask anyone who has the time (but we fear no one will have the time) to read over that 50 pages of closely printed matter and then say if they can, that such a prolixity of cross-examination was justified by counsel.

As before stated, we think it an unkindness to ask any man who has multitudinous duties to perform, as all congressmen have, to read that cross-examination, and similar exhibitions of prolixity on the part of counsel for Contestant in developing this case. Counsel for Contestant were accused early in the taking of testimony by counsel for Contestee, that they were purposely making this Record so prolix as to confuse the issues, and make it so long that few if any could ever take the time to read it through; whether this statement was just or not we leave it to others to decide from what appears here, but with due respect to counsel for Contestant we are constrained to say that in all our experience, we never saw so many questions asked of the various witnesses of Contestee on cross-examination, which apparently had no bearing, near or remote, on the issues involved.

In making our answer to Contestant's brief, we will follow substantially the same order which he has adopted in the discussion of the different questions, and the taking up of the different precincts upon which he apparently relies.

As we understand and have always understood the practice, that claims made in the Record and not repeated in the brief are abandoned; and therefore we understand and shall assume that the alleged irregularities existing in those townships and precincts which Contestant has not discussed in his brief are abandoned by him and that what the Contestant actually claims is tabulated on page 25 of his brief under what he calls the re-capitulation of votes, wherein he claims that if 919 votes are deducted from Contestee's vote and 521 are deducted from Contestant's vote, it would leave Contestant a plurality of 271; or to state it differently, if the majority secured by Contestee in the townships of Sunfield, Carmel and Winsor in Eaton County are thrown out, and the majority received by Contestee in the Second and Third Wards of the City of Charlotte are thrown out and 28 of the majority received by Contestee in the Second Ward of the Second Precinct of Battle Creek, Calhoun County, are thrown out, and the 11 votes gained by Contestant in the re-count of the Township of Climax in the County of Kalamazoo, is added to Contestant's vote, it would give him, the Contestant, a majority over the Contestee of 271 votes.

In other words, as we understand it, Contestant has abandoned all other claims which might be made by his petition and his evidence, excepting the alleged irregularities in the five precincts of Eaton County above enumerated, and one precinct in the County of Calhoun above mentioned, and the one precinct in the County of Kalamazoo above mentioned.

Before going into a systematic reply to Contestant's brief, allow us to make the further observation: The Third Congressional District is made up of five agricultural counties. It contains no large cities, unless Kalamazoo City with approximately 50,000 people and Battle Creek with approximately 25,000 people, are called large cities. We have experienced none of the rottenness, fraud and cheating which other sections of the country have suffered from. The citizenship of this district is of the highest character and almost without exception, the men whose duty it is to conduct elections and canvass the votes, are of the very flower of that citizenship. Contestant can make no well-founded claim that our elections are in the hands of rogues and rascals and can make no well-founded claim that a candidate ever suffers from fraud.

And it must be further observed that the irregularities of which Contestant complains almost wholly, are found in the county of Eaton which is almost strictly a farming community, with the largest city therein contained, Charlotte, with perhaps no more than 5,000; on top of this the townships where most complaint is made by him in the county of Eaton, are strictly farming townships where the election boards are made up of men who stand as high, morally, as any citizen of this country. Perhaps ill-advised as to the technical construction which courts might be compelled to put in given cases, upon election statutes, yet nevertheless men who would lose a right arm before they would be guilty of any intentional violation of any of the mandates of our election laws. We speak of this because we think it somewhat remarkable that in this big district where more than 50,000 voters must have participated in the election of congressman, that the only place where Contestant can find anything worth while, is in a county and in townships farthest removed from those conditions which make elections sometimes suspicious. It is a little singular and somewhat remarkable, that the only place where Contestant finds irregularities worth while, happens to be in the home county of Contestee, where he would naturally be the recipient of larger majorities than in any other county.

We believe that there is not a man in Congress today who is there with a majority of less than 500 votes, who could not be unseated for just as good and better reasons than are urged here by the Contestant; but believing as we have stated before, that this Committee, and House have only one ambition, one desire, and that is to seat the man who honestly received the most votes, irrespective of hair-splitting technicalities and the ignorant violation of statutory provisions, we confidently come with this case

believing that we will receive the fairest treatment which can be accorded to a man who is honestly defending an honestly acquired seat in the National Congress.

As a result of this election and the counts of the various boards and the canvassing of the various boards, the Contestee received a certificate of election at the hands of the proper officers of the state of Michigan based upon a plurality of 127 over the Contestant.

It will be admitted here that by reason of a mistake in the township of Climax, Contestee should have 11 votes which he gained in the recount in Climax township which was had at the time of taking testimony at Kalamazoo. But with the exception of these 11 votes which were cheerfully conceded to Contestant by the Contestee, we claim and insist that the Contestee should retain his seat because of his having honestly received, honestly counted and honestly canvassed, a plurality of 116 votes.

We will now consider in the same order Contestant has considered, the seven precincts of which he complains. We will argue the facts of each precinct and present such authorities as we think have a bearing in applying the law to such facts.

I.

Township of Climax, County of Kalamazoo.

We are somewhat at a loss to know why any space is taken up in Contestant's brief in relation to this township. A reference to the Record, page 153, 154 and 155, will show how this township was disposed of. Counsel for Contestee stated that Congressman Smith does not desire to have counted for him any ballots that he is not legally entitled to and does not desire that any votes Mr. Carney is entitled to shall be taken away from him. He then proposed that the board and the ballot box being present at the hearing, that it be opened and that each party in this contest be given precisely the number of votes that were cast for him at the November election.

It seems that on the night of the election a bunch of ballots which might be called Democratic splits were rolled up and put away without being counted. The total vote of that township was 318, while the vote for Contestant and Contestee totalled up 165. It was quite obvious that there was a discrepancy—an error in counting. When this mistake was corrected it was found that Contestant gained 18 votes and Contestee 7, giving Contestant a plurality of 10 instead of Contestee a plurality of 1 in this precinct.

The disposal of the complaint in the township of Climax was so fair and so free from anything like feeling or prejudice in the matter, that we see absolutely no ground for any aspersions against either the board of election inspectors or anyone else. In discussing this township Contestant in his brief (page 3) says:

"The evidence is undisputed that a large roll of ballots, a large majority of which were Democratic ballots, were overlooked either by *design* or mistake on the part of the election board, and by the corrected returns from this township Carney would gain 11 votes."

Permit us to note here that Contestant was willing to have a recount of the ballots in Climax Township where there would be a gain for him of some votes; but he absolutely refused to consent to a recount of the ballots in the Second Precinct of the Second Ward of Battle Creek, where much the same kind of an error occurred, and absolutely refused to consent to a recount in the Township of Carmel as proposed by Contestee, both of which latter precincts were carried by Contestee.

At this point because it happens to come to mind, we want to call attention to a little incident which occurred in taking testimony at Kalamazoo in behalf of Contestee, which becomes a trifle amusing in connection with the claim that Contestant now makes that Winsor Township should be considered by this Committee and the House, though this precinct was not mentioned in his original petition and notice. Counsel for Contestee asked a witness who was testifying, whether the ballots of Cooper Township had been initialed. Counsel for Contestant promptly objected as follows:

"Mr. Adams, objected to as incompetent and immaterial: They cannot show by parol evidence the condition of these ballots in the ballot box from anything that was gathered there when they were opened up * * * and there is no mention made of it in the notice, etc."

Record, 493.

Is this not amusing, when Contestant's brief is read in connection with the above just quoted?

At the time of making this objection just quoted Contestant hadn't heard of Winsor Township; but when he did hear about it he apparently forgot the objection made by his counsel to Contestee making similar inquiries of his witnesses. Seriously though, has not Judge Adams in his above objection, stated a pretty good proposition of the law of evidence, viz., that it is not proper to show by parol the condition of these ballots—the ballots being the best evidence. True, the ballots in Winsor Township had been destroyed before the taking of testimony, but is not the point made by Judge Adams good never theless. We leave Contestant to reconcile his conflicting claims, but will simply suggest that this is a big affair and ought not to be decided except on big ground, and if Judge Adams were right in his objection to Contestee's evidence, why apply the rule to them.

But to return to Climax for just a moment. Why should Contestant state in his brief and try to give the impression, that this mistake was made by *design*, when there is not a line, word or syllable of evidence directly or indirectly or inferentially, tending to establish any such accusation? Is it not simply in keeping with the whole spirit and tenor of this contest as presented by Contestant? He uses the words "large" number of ballots and "large" bundle of ballots. "Number" of ballots would have been sufficient.

Why wouldn't it have been sufficient for Contestant to say in his brief, just the plain facts, viz., that this former election board in the performance of its duties, with which it was not accustomed, made an honest mistake and failed to count a certain bundle of ballots cast at Climax that day? Be that as it may, he now has the full advantage of them, and out of this "large" number of ballots which the board of Climax "designedly" failed to count, he received 18 and Contestee 7. This was a confusing election. The Record shows that the physical powers of the boards were greatly taxed; many remained up all night taxing their powers in the performance of unusual duties. One man at least, in the Township of Sunfield, overworked so that in a short time thereafter he was in his grave. Another in the Township of Wright, Hillsdale County, became so weary that he was obliged to go home and permit others of the inspectors to complete the count. Michigan congressmen know that this was a peculiarly hard election, especially for the unsophisticated and untutored men who constitute a large majority of our election boards in Michigan.

The board of inspectors of Climax Township are not deserving of any such rebuke, viz., that they designedly failed to count that "large" bundle of ballots. We therefore admit that to Mr. Carney's vote should be added 11, reducing Contestee's plurality to 116, as we enter upon the discussion of the other precincts.

II.

Third Ward of the City of Charlotte, Eaton County.

In a way of preface in discussing this precinct we might say that Contestant made no mention of this precinct in his Notice of Contest or his Petition filed in this case. We will not now take the time to argue the question as to whether this precinct should have consideration or not, for the reason stated; but we do believe that in all fairness and candor a Contestant should be obliged to state in his petition and in his original Notice of Contest, the precincts in which he claims the irregularities lie; but not being certain whether the Committee and the House will consider precincts not mentioned in the original Notice (which also applies to the Township of Winsor, Eaton County, of which we will speak later) we will go on and discuss the facts in relation to this precinct in just the same manner as we do others

which were mentioned in Contestant's original Petition and Notice. Contestant starts out with the proposition (page 4) of his brief that in this precinct the undisputed evidence is that the inspectors were guilty of actual frauds and that these frauds practiced by the election board were directed solely to secure the election of John M. C. Smith.

We want to say now and with the sincerest belief that our statement is absolutely unassailable, that there was no fraud in this or any other precinct in favor of any candidate or against any candidate for Congress. We stake our reputation as lawyers and men upon the proposition that there cannot be found one line, word or syllable of testimony in this Record which justifies any unbiased person to come to the conclusion that any intentional wrong was committed by any officer, inspector or clerk of said election in any of the precincts in this Third Congressional District. We were never more sincere in a statement in our lives when we challenge the Record and every page and line thereof, on this proposition.

We wish this statement to stand as said before, to apply to all of the precincts concerning which evidence was taken by either side in this contest. Saving, however, to ourselves this fact that if any legal fraud was committed (not intentional, mark you) in precincts carried by Contestee it was equally true of precincts carried by Contestant.

And this is such an important and integral part of our contention that we wish to repeat the same proposition in other words: *The accusation that any fraud or intentional wrong, or intentional violation of our election laws was committed by any person in and about the polling places under investigation is absurd and unqualifiedly without any foundation.*

This fact we want to stand out all the way through this discussion; as a preacher sticks to his text; as an instructor over and over repeats his rule; as a crusader holds in constant view his banner; as a reformer is devoted to, and has faith in his shibboleth. We want this claim to stand out as the guiding star of our argument and claims, and we hope this Committee and this House will keep this assertion closely in mind in examining these briefs and this Record; because we feel that every unbiased person who will give this Record a painstaking and careful investigation, must find that this claim of the total want and absence of fraud, is religiously and mathematically correct.

With this as an inspiration we can argue without constraint, restraint or concealment, that if the Contestee is removed from his seat here, and the Contestant seated in his stead, a positive injustice will be accomplished, and the man having the lesser legal votes will reap the rewards and the honors intended for the other.

And we want to add a word more, that we believe as we shall have occasion to say later, that this Committee and this House are going to seat the man who has the most votes honestly cast and honestly counted, even though there be decisions and holdings which might justify the throwing out of certain of these precincts. We make this statement upon the basis that in the absence of fraud and intentional wrong, where the result is honestly arrived at and has not been changed as a result of irregularities, it is the custom and precedent of this Committee and this House, to seat such honestly elected member because it is its policy to overlook and ignore irregularities which were not intentionally committed and which did not change the result. This we claim to be the situation in this case, that though irregularities may be found which perhaps should not have occurred, yet we say that there is nothing in this Record to justify this Committee or this House, to make a finding that the Contestee is holding his seat by reason of votes which should have been counted for the Contestant, or at least which should not have been counted for him.

We have taken up considerable time on laying down these propositions and making these assertions, because we believe these ideas are the central ones and upon which this Committee and this House will act. When their conscience is satisfied that Contestee is not claiming a dishonest vote and that Contestant lacks 116 votes of having as many as the Contestee, they will ignore and hold immaterial and not applicable strictly technical holdings as to mandatory and directory provisions of our election laws.

It must not be understood here that we admit at this time that the Supreme Court of Michigan or the statutes of Michigan applying here would require the throwing out of these precincts under discussion.

We do understand, however, that the constitution of the United States makes this House the ultimate sole judges of this election—from whose decision there is no appeal, whose finding is absolute and final; that they are not controlled by any decisions or any statutes anywhere, but if such decisions and statutes are considered, they are simply of an advisory character to this Committee and this House, and in no way absolutely binding.

Perhaps more of this later, and we will now take up the discussion of the precinct mentioned in the II. heading of Contestant's brief.

We have concluded that Contestant's claims are best answered by a presentation of the facts as they appear in the Record in relation to each precinct. When the facts are considered it will be obvious that there is a great dearth, a great paucity, if you please, of evidence tending to establish a condition which shows fraud, intentional wrong, or any other condition which would require the throwing out of votes.

It is the contention of Contestant that the Third Ward of the City of Charlotte wherein the Contestee received a majority of 98 votes, should be wholly thrown out. As we understand his complaint in relation to this precinct, it is in substance that two inspectors of election suggested to voters that they vote for Contestee and also that these inspectors entered the booth with certain voters while preparing their ballots. Let us first call attention to the evidence as shown by the Record. When this evidence is read, one is actually surprised to find that Contestant can soberly urge a rejection of this precinct on such flimsy grounds.

To begin with Contestant was content to rest his case on the testimony of a single witness, Jackson Mosier; while the Contestee came frank'y and freely forward and brought in five witnesses who were officers of the election in this precinct. Jackson Mosier was the Democratic challenger, and it strikes us that one cannot read his evidence without coming to the conclusion that it lacked both intelligence and truthfulness. He testified in regard to his occupation in response to Contestant's questions as follows:

"Q. What business are you engaged in?

A. I don't know hardly.

Q. Are you retired?

A. Yes, tired.

Q. What did you say, retired or tired?

A. Tired." (R. 46).

Upon what comes from such a man as that, Contestant asks this Committee and House to throw out an entire precinct of intelligent and patriotic voters.

But let us see what he says. He testifies that when any voters asked for instruction he went in the booth with the two inspectors, Dowdigan and Dunning. (R. 44). He says that he heard a suggestion made by Mr. Dunning to a voter to vote for J. M. C. Smith and he says they had some trouble there. (R. 45-46).

Under cross-examination (R. 46, bottom) he testifies on this subject as follows:

"Q. Mr. Mosier, you didn't see anybody mark a ballot for a voter, did you?

A. No, sir; I couldn't say that I did.

Q. Now, Mr. Mosier, did you hear either one of those inspectors ask any voter to vote for John M. C. Smith in that language?

A. I did one.

Q. Who was that?

A. Mr. Dunning.

Q. Do you remember the man's name.

A. No, sir; I do not.

Q. Can you give the language he used to this man?

A. He said 'J. M. C.,' that is all.

Q. He just mentioned the name?

A. Yes, sir.

Q. Was this about the language he used, 'How about John M. C. Smith?'

A. Yes, sir; something like that.

Q. That is all he said?

A. Yes, sir.

Q. That is the thing you took offense at?

A. I didn't think it was right.

Q. That man was the one that caused the trouble when he said 'How about John M. C. Smith?'

A. That is the time I got a little mad.

Q. Do you remember that man's name?

A. No, sir; I cannot think of his name."

The witness was then re-examined by Contestant's counsel, and apparently seeing how trifling the case had become under such cross-examination, attempted to strengthen it as follows:

"Q. Did you hear any suggestion made to any of these others that applied for instructions that day?

A. The same thing.

Q. How many different times did you hear these suggestions given to voters.

A. I couldn't tell you how many there were who asked for assistance. I couldn't give the number.

Q. State whether or not suggestions were made to all when you were present that day?

A. Do you mean those who asked for assistance?

Q. Yes, sir.

A. All those I think, yes, sir." (R. 46-47).

The witness then goes on to testify that he didn't pay any attention to who they were and did not know any of them by name. Witness also testified that the voters simply asked how to mark the ballots and then marked them themselves. (R. 48).

The Contestee, as stated before, when he came to take his evidence as to what occurred in the Third Ward of the City of Charlotte on that day, brought in the two inspectors which Contestant accuses of fraud—Dunning and Dowdigan; two clerks of election, Fisher and Munger, and the Republican challenger of the precinct, Sawyer. Beginning with page 405 of the Record and ending with 433, is found the testimony of these five witnesses to which we will briefly refer, and then let this Committee exercise its choice as to what the facts were between Jackson Mosler, the single witness produced by Contestant, and the five men who actually conducted the election there that day. Mr. Dunning testified that he acted as one of the inspectors and when asked whether he heard anyone electioneering for John M. C. Smith there that day, said that he did not. Mr. Dunning was asked whether he mentioned Mr. Smith's name that day and he said that he did at one time. He stated that he mentioned it casually under the following circumstances: Mr. Tracy, a very old man with whom he, Dunning, had been well acquainted, came in there to vote and there were two old men in there at his back and he, Dunning, and Mr. Dowdigan heard them talking there and turned around and he heard this old man say, "I want to vote for Mr. Storrs and somebody else," and I says, "How about J. M. C.," and he says, "Yes, that is the man." (R. 406). Witness testified that that is the only time he said anything about it. He did not see the other man's ballot and was not in the booth and was not where he could see his ballot. He testified that he did not know whether the old gentleman marked the ballot or not. He further testified that no voter applied to him for instructions of any kind that day about marking his ballot. This was the length, breadth and depth of Mr. Dunnigan's infamy in soliciting votes for John M. C. Smith, the Contestee. It seems that this old man, Tracy, wished to vote for his fellow townsman, Mr. Smith, and just for the moment he could not think of his name and Mr. Dunning suggested it, to which he replied, "Yes, that is the man."

Now, calling attention to Mr. Dowdigan, the other inspector. Mr. Dowdigan testifies in relation to his alleged soliciting of votes as follows:

"Q. Who was there to assist voters if they had to be assisted?

A. Why, I was on the inside where the voters came in and handed the ballots out to them and they would turn to me for assistance.

Q. You mean to go into the booths and mark the ballots with them who asked for instructions?

A. Yes, sir.

Q. Did you go in the booth and mark any ballots for any voter that day?

A. I didn't mark any ballots; I went in the booths I think twice * * * I might have been three times.

Q. Now, did you hear the testimony of Mr. Dunning?

A. I heard part of it.

Q. Do you have any recollection of that occurrence? * * *

A. Yes, sir; there was quite an old gentleman in the booth and he said he could not see to mark his ballot, he wanted some assistance, so I stepped in the booth from my side and called Mr. Mosier from the other side; he was pretty well over toward the side of the booth that Mr. Mosier came in from. As Mr. Mosier stood there holding the door partly open with his hand. And this man says—I ask him who he wanted to vote for and he says, 'I want to vote the Democratic ticket and some of the Republican ticket.' I showed him the head of the Democratic ticket and Mr. Mosier was looking on and Mr. Johnson was looking over Mr. Mosier's shoulder. Mr. Johnson was outside of the booth. I made a mark in a circle at the head of the ticket and I says: 'Who else do you want to vote for?' He says, 'Mr. Storrs.' That was on the county ticket. And I showed him where Mr. Storrs's name was and he made the same mark there. I says, 'Are there any others,' and he says, 'Now wait a minute.' I says, 'How about J. M. C. Smith?' He says, 'Yes, I want to vote for J. M. C. Smith,' or words to that effect. That was all that was said." (R. 420-421).

The witness further testified that he heard no electioneering for any candidate nor heard no one urging or suggesting to any voter that he support or vote for any particular candidate at that election. (R. 421). This witness further testified on cross-examination (R. 421, bottom) that this man Tracy voted for John M. C. Smith and marked the ballot himself. Witness said he was in the booth on one side and Mr. Mosier on the other side. Witness further stated (R. 421) that no oath was administered to Mr. Tracy before assistance was rendered. He further testifies that the other man he went into the booth with was a Mr. Cooper, that he was a very old man and very feeble and must be upward of eighty-five, witness states. Witness further testified that he would judge from the old gentleman's appearance that he could not see to mark his own ballot. (R. 422).

Claude E. Fisher, one of the clerks of the election in the Third Ward of the City of Charlotte, was produced as a witness by Contestee and he testified that there was no electioneering around the voting place, but remembers the Tracy incident and relates it as follows:

"An old gentleman came in, I don't remember his name, and I don't remember whether he was blind or whether he couldn't read, but he was a very old gentleman, and he asked for instructions and he said, as I remember it that he wanted to vote for Mr. Wilson and Ferris, and Mr. Dunning was standing by the booth or door and he says: 'How about J. M. C.?' I think those were his words. That is the only thing I heard during the day that had anything to do in regard to electioneering." (R. 424-425).

Roy Munger, the other clerk of election for this precinct, was called as a witness by the Contestee and he testified that Mr. Carney received credit for all the votes that were cast for him to the best of his knowledge. (R. 427). In relation to this Tracy incident witness testified as follows:

"The only thing I remember was the time when an old man went in there and asked for instructions and Mr. Dunning said something like this, 'How about John M. C. Smith or J. M. C. Smith.' That is the only thing I saw or heard that Mr. Dunning said during the day that would be taken for electioneering for anyone.

Q Did you hear Evander Dunning at any time urge anyone to vote for John M. C. Smith or mention his name aside from what you have just mentioned?

A. No, sir."

John W. Sawyer, the Republican challenger for this precinct on that day, was called as a witness for the Contestee, and testified in relation to this matter, that he did not hear anyone urge anyone or solicit their vote. Witness said:

"I heard a man say there were two men on the Republican ticket he wanted to vote for; one was Mr. Storrs, and the other he couldn't remember which one it was. He was an old man and Mr. Dunning says, 'J. M. C.' and he says, 'That is the man.'

Q Did you hear Evander Dunning make a suggestion of that kind to anyone else during the day?

A. No, sir.

Q Where was Mr. Mosier at that time?

A. I think he was in the booth with the man himself." (R. 431).

We cannot take the time of this Committee to quote further from the testimony in relation to this particular precinct. But summing it up it seems that all this alleged fraud which Contestant charged in his brief, page 4, against the two inspectors, Dowdigan and Dunning, simmers down to this: That on election day an old man by the name of Tracy came in there, went into the booth and decided to vote the Democratic ticket in the main, but wished to vote for certain Republicans; that he could remember one of the names, Storrs, the Republican candidate for sheriff, but could not remember the other man he wished to vote for. In response to the dilemma he was in, the name of Contestee was suggested by both Dunning and Dowdigan, which mention refreshed the old gentleman's recollection and he said, "Yes, that is the man." Dunning did not go into the booth with him, did not see the ticket, nor know how he marked it, but Dowdigan did go into the booth together with this man Mosier, who saw and heard all that was done. The soliciting of votes charged then by Contestant in his brief under discussion of this precinct, amounts to the suggestion made to an absent-minded voter by the inspectors of the Contestee's name.

While it is true that in one place Mosier testifies that this same suggestion was made to all the voters who asked for instructions, in another place, as we have shown, it simply simmered down to one instance which was in regard to this old man Tracy; but we are content to rest our case on the testimony of these five witnesses against the contradictory statements of this one witness produced by the Contestant. Dowdigan frankly admits that he went into the booth with two or three voters, one being this old man Tracy and another an old gentleman about eighty-five years of age by the name of Cooper, who apparently could not see to mark his ballot, and it may be one of these of which Dowdigan apparently had no accurate recollection.

Contestant says in his brief that Dowdigan admitted that he solicited one vote for Smith and Dunning admitted that he solicited one vote for Smith (Contestant's Brief, page 4). What is the use of intelligent and able counsel making such assertions? We have quoted copiously from the evidence and have set forth the substance of it on both sides, and neither Contestant's witness nor Contestee's witnesses have testified to the soliciting of votes for John M. C. Smith. The most that can be said concerning this is that one particular incident and only one of these two election inspectors in assisting a voter, suggested to said voter a name which he was apparently trying to think of. Would it not be too bad—yes, absurd—to throw out 330 votes because perchance one single vote had gone in which had first come in touch with a slight indiscretion, to say the least, before being cast? No court on earth would throw out the vote of the Third Ward

of the City of Charlotte on the statement of alleged fraud made here by Contestant.

But counsel attempts to re-enforce his argument by citing the section of the statute which he claims has been violated and citing some Michigan Supreme Court decisions in relation thereto; Contestant claiming that when the law of Michigan is applied to the facts in this precinct the votes must be thrown out irrespective of whether there is any proof of irregularities which affected the result. It is true that the soliciting of votes is made unlawful by the Michigan election law, said law being as quoted by Contestant at the bottom of page 4 of his brief.

Contestant says after quoting this section, being Section 3643, Michigan Compiled Laws of 1897, and Section 170 of Exhibit 67, "this case has been very forcibly construed in

Attorney General vs. McQuade, 94 Mich. 439."

We may be mistaken, but we do not think that this particular section (relating to the soliciting of votes) has been construed in the case cited, though we have no doubt that if a case were presented where the soliciting of votes were carried on in violation of that section, to such an extent as to make the result of an election doubtful, that our court, or any other court, might in a given case decide that the whole precinct should be rejected.

This case of Attorney General vs. McQuade, cited by Contestant at top of page 5 of his brief, and the case of McQuade vs. Ferguson, 91 Mich 438, cited at the bottom of the same page, are cases relating to an election which was held in the Township of Ecorse in the County of Wayne, this State. Let us examine those cases, but briefly. It is stated in the McQuade vs. Ferguson case at page 439, that alleged violations were that Hyacinth Riopelle, as chairman of the inspectors of Precinct No. 2, permitted outsiders to go into the booths with voters, and help them mark their ballots; that such electors were never sworn or examined in any manner by either of said inspectors to ascertain whether such voters could read their ballots or were incapacitated from performing their duty; that Inspectors Montie and Haltner repeatedly protested against such conduct, but were overruled by the chairman; that said Riopelle permitted upwards of ten different outsiders to accompany a large number of voters into the booths to help them in marking their ballots; that upwards of 50 voters were thus assisted without any examination as required by the statute; that these outsiders went into the booth with the voters and remained there until the ballots were cast, etc.

In the case of Attorney General vs. McQuade, 94 Mich. 440, the situation is stated there in substance as follows: That about 75 voters in that precinct had shown their ballots after the same had been marked and the chairman of the Board of Inspectors, Hyacinth Riopelle, allowed and instructed third parties to enter the polling booths to mark these 75 ballots for these voters.

The pleadings in these cases were so made up that the Supreme Court said that these facts must be taken as confessed and true. Under such a state of facts as is presented by what we have set forth above, the Supreme Court of the State of Michigan, said as quoted by Contestant in his brief, that the provisions of the election law had been grossly violated; but what comparison is there in the facts between the two cases cited and now being discussed by us, and the Third Ward of the City of Charlotte? In the McQuade case some ten outsiders were allowed to go into the booths and mark ballots for something like 75 voters. The comparison need only be stated to show the tremendous difference between such a case, and where there could not have been by any possibility, more than one or two tainted votes.

But there is another matter we wish to call attention to. At the time the decision of the case of Attorney General vs. McQuade and McQuade vs. Ferguson, the statute was different so far as relates to the entering of the booth. The section which relates to a person taking an oath prior to receiving assistance, at the time of those two decisions read as follows:

"If the elector shall make oath that he cannot read English or if it shall be made to appear that from physical disability he cannot mark

his ballot, his ballot shall be marked for him, in the presence of at least two of the inspectors by an inspector designated by the board for that purpose, who is not a candidate on the ticket."

Act No. 190, Laws of 1891, Section 32.

The section just quoted has been repealed and the one substituted which now stands as Section 3642, 1st Michigan Compiled Laws, being Paragraph 169 of Exhibit 67 in this case. It will be noticed in reading the case of Attorney General vs. McQuade that much stress is laid upon the fact that the booth was entered by others than the elector. The Supreme Court assumed that this was a flagrant violation of the election law as it then stood. The principal change in the Section as quoted by us in this brief and the Section quoted by Contestant in his brief (page 5 at bottom) is that in the older Section this ballot had to be marked in the presence of two of the inspectors, while now the Section provides that it shall be marked in the presence of the challengers of each political party having a challenger at such voting place; another difference is that the latter Section provides that this marking which the inspector shall do for the ignorant or disabled voter *shall be done in one of the booths*

In other words, when these McQuade cases (they are both the same case) were decided by our Supreme Court the statute was different from what it is now—they having been decided in 1892, while our statute in this regard has been amended since.

It seems to us a little unfair for Contestant to neglect to call attention to this fact. The language used in the McQuade case and which is copiously quoted from in Contestant's brief is language that was used in relation to a statute which was essentially different than that section of the statute is now. As stated before, the Supreme Court condemns the practice of entering the booth with the voter where he is inspector or not in the following language:

"If an inspector or other person be permitted to enter the booths with the voters, the danger is far greater than under the old system, where there was some opportunity to see and detect fraud, etc."

Attorney General vs. McQuade, 94 Mich 443.

But since the above language was used the statute (Section 169 of Exhibit 67) expressly provides that the inspector who does this marking shall do it in the booths—he must accompany the voter he is assisting into the booth.

So we repeat that it certainly would have been no more than fair if Contestant had called the attention of this Committee and House to the fact in his brief, that the cases he has cited were decided when this particular Section of the statute read essentially different from what it does now. The legislature evidently disagreed with our Supreme Court as to the venality of allowing an inspector to go into the booth; but what the Supreme Court was condemning in the McQuade case was the permitting of outsiders, some ten in number who were in no way connected with the election, to enter the booths and mark these ballots for these illiterate voters. Such conduct is shocking and the Supreme Court was right in throwing out the entire precinct.

But admit for argument's sake, that in the Third Ward, Dowdigan did enter the booth with two voters who were not first sworn, not only would such a slight irregularity be disregarded under the circumstances, but we think the evidence fairly shows that these two particular voters were men whose very appearance justified the action taken by the inspectors without their being sworn. The statute provides that the elector who cannot read English must be sworn, but if he is unable to mark on account of physical disability and such disability shall be made manifest to the inspectors, his ballot shall be marked, etc.

This plainly implies that if the disability is a physical one and is one discoverable by the inspectors without the oath of the prospective voter, he need not be sworn. This is within the plain provisions of the statute.

The case of Attorney General vs. May, 99 Mich. 538, holds no more than that it is unlawful for an inspector of an election to assist in marking a ballot for any elector who claims to be unable to read English until such elector shall have first made oath to the fact; it further holds that this requirement is mandatory and votes in violation thereof should not be counted. In our opinion there is no necessity in dwelling upon the law laid down in this case. It simply addresses its reasoning and argument to the proposition that where votes are illegally cast they should not be counted and should be withdrawn from the count if it can be ascertained how many were thus illegally cast.

We have reviewed these decisions cited by Contestant quite at length to show how different the facts were in those cases from those claimed in the Third Ward of the City of Charlotte in this case; and after the evidence is read to which we have called attention, is it not pretty near absurd for Contestant to claim as he does in his brief (page 6, top), that the Record shows conclusively that the soliciting of votes in this precinct was permitted and continued during the whole day; and in view of the evidence is not this proposition astounding:

"That not only the entire board could hear the conversation and the soliciting but that prospective voters in the voting places could hear, and must necessarily have been affected by finding the entire election board either actively engaged in soliciting votes for Smith, or at least tolerating it. The condition in this precinct became so absolutely bad, and apparently the board were so hardened to it, that when complaint was made one member of the board boldly stated, 'What are you going to do about it?'"

When it is remembered that no votes at all were solicited, that there was a single suggestion made to one single voter who was trying to remember a name, and when it is remembered that inspectors went into the booth with only two voters and they both old men and that whatever was done, was done in the presence and hearing of this Jackson Mosier, the Democratic challenger, it is absolutely ridiculous for Contestant to claim what he does by his language above quoted.

As we understand it, the only possible thing which occurred in this precinct which could meet with the slightest criticism is the suggestion made to the one voter, a Mr. Tracy, who was trying to think how to mark his ballot, "How about J. M. C. Smith," because as we have shown, no harm existed in Dowdigan entering the booth several times with voters he was assisting, because as shown, the statute permits this in cases where the disability is made manifest, and actually directs that the inspector shall go into the booth to render this assistance.

The Michigan cases cited by counsel can have no application here. While it is true as stated before, that soliciting is against the law, and men can be punished for it, and it might be even admitted that where a sufficiently bad condition appeared that precinct should be thrown out, yet it does not appear in this case that any soliciting was done; and secondly, we have not yet found where the Supreme Court so held that a precinct should be thrown out for that reason, and especially is it true that this Committee and House will not throw out this precinct for the trifling irregularities, if they can be so called, which took place in the Third Ward of the City of Charlotte.

We will not at this particular juncture discuss the question as to whether the House, which is the sole and only judge of these matters, will be guided by state laws and decisions, but might simply intimate in closing the discussion under this particular heading, that we do not believe that the Committee or the House would throw out this precinct (in view of the trifling irregularities shown) even if it could be shown to them that certain Supreme Court decisions rendered in cases where the irregularities were serious and the defiance of the election law was great, had held in those particular cases that these statutory provisions are mandatory and would taint the whole vote of the precinct, so it should be excluded; in other words, we believe that this Committee and House will exercise its prerogative in rendering a decision here which will do justice in this particular

case irrespective of what the court found necessary to find the law to be in other cases in order that justice might be done in those cases. In another place we may have occasion to say something more as to what we understand to be the rule of the House in deciding these election contests in relation to state laws and decisions, but it seems to us that no person could by any possibility come to the conclusion that anything occurred in the Third Ward of the City of Charlotte which should require the exclusion of that precinct. We therefore deny that the majority which Contestee had in this Ward of 98 votes should be set over as a gain to the vote of Contestant.

III.

Sunfield Township, Eaton County.

As we read Contestant's brief, we conclude that the principal, perhaps the only, complaint that he makes in regard to this precinct, relates to the action of the board in appointing one Albert Sayre as instructor—administering the oath to him for the performance of that duty. True, something is said on page 6 of the brief about the adjournment had by this board at about midnight on election night, but we do not apprehend that Contestant lays much stress upon that action; neither do we imagine that Contestant would claim that this vote should be excluded because of the slight assistance in tallying which was rendered by one or two who were not members of the board.

This township presents the anomalous situation of a Democrat complaining about the action of his fellow Democrats; in other words, it presents the situation of Contestant accusing his brother partisans of having conducted an election in such a manner as to have prejudiced his rights as a candidate for Congress.

We will have occasion later to call attention to the fact that it has been held that in substance, one should not complain of irregular action in these matters of those belonging to his own political party. Not only for this reason but for a broader and more equitable reason we have been strongly impressed with the inconsistency of Contestant's claim in this township. We think the Committee and the House should apply the doctrine of estoppel here and not permit Contestant to profit by mere mistakes of his own party friends.

In this precinct Contestant has been satisfied with subpoenaing one member of the board and compelling Contestee to subpoena the balance in order to give the House suitable intelligence on what actually occurred there that day. Contestant subpoenaed the supervisor, a great big man in every way, except perhaps deficient in ability to construe election laws. He also subpoenaed two others, one being Sylvester Franks, the marshal of Sunfield Village, who gave his observations as to the midnight adjournment, and the other man, Witherall, who, though not sworn, did assist somewhat in the tallying.

The inspectors—two out of three, were Democrats. Witherall, the one who helped tally, it seems was a Democrat. In short, the election was controlled and managed by Democrats. The man against whom the worst complaint was made, Albert Sayre, the instructor, was a Democrat and voted for Contestant as well as the straight Democratic ticket.

Let us now examine briefly what the Record shows in relation to the election held in this township. First, let us examine very briefly the testimony of the Supervisor Palmer:

He testifies that he is sixty-three years of age, has lived in the township for twenty-three years and is a shipper of grain and produce. (R. 66).

He further testifies that Mr. Witherall assisted in keeping the tally; that Mr. Bera, the postmaster, tallied, and did not handle the ballots. (R. 71) He further testified that he has been elected supervisor on the Democratic ticket in this strong Republican township, that he has been repeatedly so elected. He testifies that Mr. Bacon was a Democrat and died very soon after the election (Mr. Bacon was one of the inspectors); further he testifies that Mr. Sayre who acted as instructor that day was a Democrat

and that a majority of the board of inspectors were Democrats, that Mr. Mapes, one of the clerks, was a Bull Mooser, (R. 75).

Mr. Palmer further testified that all of his actions were in favor of an honest election and that so far as he knew, Contestant got credit for every vote that was cast for him, as well as Contestee; that there was nothing occurred there that affected the result of election for members of Congress; that they appointed Mr. Sayre instructor because they supposed they had a right to swear in such an officer, and that they did this to facilitate and help the election along; that that was their intent and purpose (R. 75). He testified that this man Sayre was in the same room with all of them, though he was on one side of the booths and the inspectors and the clerks were on the other, but that he would have no difficulty in hearing anything that was said by each of them if they talked loud enough; that no one except legal voters voted that day, and that he knew all the voters. He testified that the election was a peculiar one with many split ballots and that about 12 o'clock at night they had got pretty tired. (R. 76).

This witness described the manner in which the votes were counted as follows:

"Mr. Bacon called off when he took a ticket—he called off each candidate's vote as he came down through, and I would watch over his shoulder to see whether he called off correctly, and when I stepped to one side Mr. Hager would do that; when Mr. Bacon would get tired I would sit down and call off and Mr. Hager would look over my shoulder.

Q. There were two inspectors examining the count as you went along?

A. Yes, sir." (R. 77).

He further testified on the same page of Record that he thought Bera was a deputy township clerk.

Mr. Witherall, one of the witnesses for Contestant and who assisted in the count for about an hour (R. 90) testified that he was a member of the Democratic county committee and had been for some years. We will state, however, to be entirely fair about it, that it developed later that probably he was not a member of that committee at the time of giving his evidence, but the substance of his testimony was that he is a Democratic voter. He gave no further testimony throwing much light upon the subject, and the other witness of Contestant, Sylvester Franks, as stated before, gave no important testimony in our view of the case, and testified mainly in relation to the midnight adjournment concerning which we do not understand Contestant is making any claim. As before stated, Contestee subpoenaed in six witnesses who were directly connected with the election in Sunfield—some who were officers of the election and others who participated much or little.

Dennis Hager was one of the inspectors of the election and testified that he is pretty well acquainted in the township and that no persons voted at that election at that precinct that were not resident electors of that township. Speaking of the midnight adjournment he says that they went out and went up to the clerk's office and from there over to the barber-shop; that when they had been in the barber-shop probably a couple of minutes they had orders to go at it and count the votes. In the meantime they had called the Prosecuting Attorney at Charlotte who directed them to go back and go to counting.

They were absent from the polling place but a very short time. (R. 218).

This witness was asked whether all the ballots that were in the box that were cast for the Contestant were read for him, to which he replied: "They were, he could not have got any more."

When the testimony of this witness is read, one is deeply impressed not only with the fact that nothing was done to prejudice Contestant, but that as a matter of fact all acted honestly and with a firm determination to do their duty as they understood it; and that nothing occurred which deprived Contestant of a single vote.

Z. D. Slater, the gate-keeper, was summoned and we simply call attention to his evidence as to how the election was conducted and how the ballot box was cared for at the time the board went to dinner.

D. W. Knapp was called as a witness by Contestee and gave a clear and straightforward account of all the occurrences of the day upon which he was interrogated. His evidence begins on page 237 of the Record, and we respectfully ask that his evidence be read in connection with this claim made by Contestant that this township be thrown out. He says he kept the tallying just as straight as he ever kept any tallying, that he kept it straight as they read it over to him; that when they left the polling place at midnight the ballots were put in the ballot box and locked up, that those that had not been counted were rolled up by themselves and those that were counted were laid out flat. He testifies that he considered that the count and tallying were correct. (R. 238-239). He testified that he gave Contestant credit for every vote that was called for him and that Contestee got no votes that were not called for him. After the adjournment at midnight was had this witness says they went back to work again in about thirty minutes. (R. 240).

Contestee also subpoenaed H. H. Mapes, who was township clerk, and was acting upon the board as clerk that day. He testified that he appointed his father-in-law, J. H. Bera, as deputy township clerk.

This witness also testified as to the midnight recess or so-called adjournment and describes how they protected the ballots at that time. (R. 251-252).

As is the case of the other witness subpoenaed by Contestee here, we ask that the evidence of this witness be examined, when it will be found that everything was just as straight and square so far as intentional wrong was concerned as it could possibly be at this election in the Township of Sunfield that day.

Complaint is made because of the conduct of Joel H. Bera, postmaster of Sunfield, in his tallying some ten or twelve votes that day. It seems that this man is by no means a rogue, as it appears that he has been clerk, supervisor and treasurer of his township before being appointed postmaster; that he was deputy township clerk at the time of this election. (R. 244). He says he tallied some ten or twelve votes. This witness further testified that Mr. Witherall told him that he had voted the Democratic ticket and had voted for Contestant. (R. 246).

When the testimony of this witness and all the witnesses in relation to Sunfield is read over, we challenge the discovery of anything in any way, shape or form which was done by this man Bera which could in any way from a moral or even legal standpoint, be condemned.

We now come to the testimony of Albert H. Sayre, upon whose conduct is predicated the proposition that this township should be thrown out.

Examining his evidence beginning at page 433 and ending on page 438 will be found a straightforward account of his connection with this election.

When asked how he came to serve on the board he says that he was there in the morning and they named him as instructor.

It must be remembered at this point that two out of three of the inspectors were Democrats, and quite naturally a Democrat would be chosen to fill this or any other position that happened to be open that day.

He says he was sworn to perform this duty and that therefore he handed out the ballots; that he had the table to lay his ballots on and a chair to sit in and deliver a ballot to each voter as he applied for it. (R. 433).

He further testified that he didn't go into the booth and didn't tell them how to vote or anything of that kind, marked no one's ballot, but told some voters where to mark their ballots; that he didn't see anyone mark their ballot, nor that he did not solicit votes for anyone; that his politics is that of a Democrat, that he supported Mr. Carney and voted the straight Democratic ticket and emphatically, that he solicited no vote for J. M. C. Smith. (R. 434).

Contestant bases his claim as stated before, that this township should be thrown out on the action of the board in appointing Sayre instructor and upon the conduct of Sayre in distributing these ballots to the voters, and claims that this precinct should be thrown out on the authority of the case of

As before stated, we will discuss in another portion of this brief the question as to whether this Committee and this House should be bound by Michigan decisions, even if it were found that this decision and others which have been cited by counsel would require the exclusion of this vote. We shall point out, however, the distinction between the facts in the Kirby case just cited, and the facts in the township of Sunfield. Let us examine for a moment this Kirby case cited on page 8 of Contestant's brief. In speaking of this so-called instructor and what he did there that day, the Supreme Court says, at page 594:

"It was his custom to ask voters as they entered if they knew how to vote, and if they desired instruction, he took the ballot, sometimes holding it against the wall and gave instructions. He had free access to every voter who came in. *It is established that he talked with them while in the booths with the doors open*, and himself standing in the door of the booth. He was while talking with the electors, a good share of the time out of the sight of the inspectors and challengers. * * * Several voters testified that he showed them upon the ballots where to vote for respondent, if they desired to."

Under this state of facts the Supreme Court did use the language quoted by Contestant on page 9 of his brief.

It strikes us that there is a great deal of difference between the facts as revealed in the Kirby case and the facts as revealed by the testimony of the witness in the election in Sunfield Township. In the Kirby case it is stated that he talked with them while in the booths, that he made suggestions to the voters how to vote for the respondent in that case. We therefore do not think that the decision in the Kirby case would control the decision of our Supreme Court necessarily in this case, but if it be held that it did it certainly does not control the Committee and the House in passing upon the merits of this contest for at least two good and substantial reasons.

First, absolutely nothing occurred of a venal or dishonest character in the conduct of Sayre in the performance of his duty. Then if the House finds that nothing occurred there which could by any possibility be construed into fraud or intentional wrong and which could not and did not change or influence the result, this House will not be bound by the decision in the case just cited for reasons already given and for reasons that we will give later on in this brief.

And second, as stated before, these so-called irregularities were the action of partisan friends of the Contestant, and he should not be permitted to complain of such action unless it appear that it did as a matter of fact, prejudice him in the precinct and lose him votes. We will call attention to a contest where this principle was recognized, later on in this brief. The evidence all shows that this was an honest election where no venal ballots were cast and no effort was made by anyone to influence the free and untrammelled exercise of the franchise by the voters of that precinct. Let us call attention to what Contestant's reasoning might lead to: Sunfield was a strong Republican township, where as a matter of fact, Contestee should ordinarily, and did receive a nice vote. If such principles prevail as are contended for here, how easy it would be to systematically throw out strong Republican townships, by intentional wrong action on the part of Democrats in permitting such things to take place as took place here in Sunfield. This would be true as to strong Democratic townships where Republicans happened to be in control of the election. The minority party might permit some such thing as this, for the purpose of challenging the election later on.

To state this in other words, and more explicitly, supposing the Democratic friends of Contestant knew on the morning of election, that Smith would get a large majority in Sunfield, how easy an irregularity of this kind could be introduced rendering the election void and Sunfield with its nice majority for Contestee thrown out, though Contestee himself is as innocent of any knowledge of such action as an unborn babe.

When people are discussing possibilities of wrong doing on the part of election officials, this suggestion made above must be conceded to be abso-

lutely sound, and as much to be guarded against as what Contestant is asking this Committee and this House to guard against, in this case.

We, therefore insist for reasons herein stated, and which will be stated later on in this brief, that there not being one word or inference of fraud appearing by the evidence in this precinct, and it positively appearing that each of the parties to this contest have had counted for them the actual number of votes cast for each, and nothing occurring which any rational or unbiased mind could for a moment claim, has changed the result, the votes of this precinct should stand just as they were counted by Sunfield officers, canvassed by the county canvassing board of Eaton County, and later canvassed by the State Board of Canvassers as 174 for Contestee and 104 for Contestant, leaving as we close the discussion on this precinct the plurality of Contestee 116, as it was in the first place, and as we claim it should continue to be in the consideration of all the precincts complained of by Contestant.

IV.

Second Ward, City of Charlotte, Eaton County.

As we understand it, the principal complaint made in regard to this precinct is that one John C. Nichols, who was not a member of the Board of Election Inspectors, deposited some ballots which had been marked by the voters, in the ballot box. True, something is said in Contestant's brief about the manner in which Mr. Knowles, one of the inspectors, conducted the election while short of help, in not only delivering the ballot to the voter, but going over on the other side of the booth and depositing it in the box. He was doing the best he could under the circumstances, and we can see no rational ground for complaint in this regard.

As stated, the ground upon which this precinct is condemned is that Nichols deposited some ballots in the box without any authority to act in that capacity.

In this case as in other cases Contestant has contented himself with producing two witnesses, and asks this Committee and House to throw out this Ward on the testimony of these two, while the Contestee has freely and fairly come forward and produced six witnesses who participated as officers and otherwise, in the election in this precinct. Contestee has subpoenaed the two aldermen and two clerks and one who was sworn in as an inspector during the day, as well as this much anathematized Nicholas whose conduct is expected to throw out a nice majority for Contestee in this precinct.

Let us review briefly the testimony of these witnesses on the salient points made. We will begin with the testimony of the Democratic challenger, F. M. Overmyer, who testified for Contestant. He testifies that he was Democratic challenger for that Ward and that he saw John C. Nichols take quite a number of ballots as they were passed to him and announce the name of the voter and deposit the ballots in the box. He testifies that as near as he recollects now that Nichols was there from an hour to an hour and a half, saying: "I might be a little off in that, but that is my best recollection at this time." (R. 50). A second witness was produced by Contestant on this point, viz., E. G. Davids, who testified that he saw John C. Nichols in this voting precinct receiving ballots and depositing them in the ballot box; but he was only in there about ten minutes and hence could say nothing further on that subject. (R. 93-94). Upon this flimsy and uncertain testimony Contestant asks that this Ward with a majority for Contestee of 54 votes be thrown out.

Let us now examine the evidence which gives a better understanding of what actually occurred there. John C. Nichols testifies that he holds the office of Circuit Court Commissioner, and that he has held the office of Justice of the Peace and County Clerk and that he has also been Deputy County Clerk; that he was elected Circuit Court Commissioner at the last election, (R. 304); that on the fourth day of November he was appointed County Clerk in place of one E. J. Pray, who was a candidate for the legislature. (R. 305). This witness further testified that Mr. Hamilton, one of

the aldermen and an inspector, was taken sick and was quite sick and did not assist further in the election that day. When Mr. Hamilton went out Mr. Knowles asked Mr. Nichols to deposit a ballot in the ballot box and thereafter he deposited some four or five in the box. He says he does not think he was there over ten or fifteen minutes when Roy Barber took his place. Barber was appointed to take Hamilton's place. (R. 305). Nichols was challenger for the Republican party.

Mr. Hamilton, one of the inspectors, gave evidence in regard to the election in this precinct and in a clear and straightforward manner explained what occurred there that day. He says John C. Nichols acted as challenger for the Republican party. (R. 366). He says that he was taken sick and got C. R. Barber to take his place. (R. 367).

C. R. Barber, the man who was sworn in to take Hamilton's place, was produced as a witness by the Contestee and testified that Hamilton requested him to go to the polls and take his place on the ground that he, Hamilton, was ill.

Claude S. Knowles, an alderman and one of the inspectors, testified that Hamilton acted as an inspector until he was too sick, then his place was supplied by Roy Barber; that he saw John C. Nichols there and on this point testified as follows:

"Q. Did he receive any ballots?

A. Yes, sir.

Q. How did he come to do that?

A. I asked him to. It was during the noon hour and there was several came in there at once and I was busy and Mr. Nichols stood there and I asked him to receive ballots for a few minutes; he came inside and received a few.

Q. About how many did he receive?

A. I think in the neighborhood of 5 or 6 or 7.

Q. Then what took place?

A. Well, Mr. Barber came and relieved him. No, I think not; I think before that, that I took care of them myself; I think I received some before Mr. Barber came, after Mr. Nichols took a few." (R. 386).

Roy S. Preston, one of the clerks of the election, was produced by the Contestee and gave evidence as to what occurred there in relation to Mr. Nichols depositing ballots as follows:

Q. During the day there at any time during the noon hour or at any time did you see John C. Nichols in the inside of the voting place?

A. I think he was there a few minutes.

Q. What did you see him doing, if anything?

A. If I remember correctly, he received and put two or three ballots into the box." (R. 394).

The other clerk in this precinct, Herman Gulde, was also produced by Contestee and gave a straightforward account of what occurred there so far as he was interrogated. It is somewhat interesting to note that this young man is a Democrat. (R. 404). We speak of this fact at this time for the purpose of showing that these boards were not all partisan boards, but to a great extent were bi-partisan and no one was trying in any place in this district to injure anyone whose ambitions led him to compete with his fellows for public office.

Contestant starts out in his brief under this heading (IV) with quite a tirade on this John C. Nichols. Our experience has been in quite a long number of years in the practice of law that it is very common to pick out somebody in every lawsuit to be the "goat." So, enter the "goat." But in all the 50 pages of cross-examination of this witness, and in everything they have tried to fasten upon him, he emerges from the encounter with a mighty little smell of fire upon his garments.

Eaton County has seen fit to repeatedly elect him to public office, and at the very last election at a time when Republicans fell under the storm

of adverse ballots, Nichols came through smiling with a good majority for the office for which he was contending.

Hon. Clement Smith, as pure-minded a man as ever sat in a judge's seat, after a long acquaintance with Nichols, chose him to act as county clerk of the County of Eaton at the time of the resignation of Mr. Pray. Contestant says in his brief (page 10) that Nichols was appointed county clerk on the 5th day of November, but did not make it public until November 14th. This is obviously incorrect, as the Record shows. He was appointed on the 4th day of November and began acting immediately. (R. 305). True, his bond was not executed until the 11th day of November, but what of it? What connection is there in that to whether Contestant or Contestee should have this seat in Congress. The effort was made to show that Nichols was a strong partisan for Contestee and that what he did was done for the benefit of Contestee.

Contestant avoids admitting in his brief the fact that Nichols was a challenger in the precinct that day, and as such had a right to be behind the railing. Contestant further avoids any reference in his brief to the fact that an emergency arose in the Second Ward that day where one of the aldermen was taken sick and the other alderman was being overwhelmed with work, when he asked Mr. Nichols to deposit a few ballots in the box. We do not believe that any such narrow construction can be placed upon our laws.

As to the fact of how long he was depositing ballots, we cheerfully submit the issue made between the testimony of Overmyer and the testimony of the balance of the board, including Nichols, and how many he deposited. This Committee and the House will take its choice between the uncertain and obviously incorrect testimony of Overmyer and what the balance of the board said about it, as revealed by the testimony already referred to.

We think this Committee and House will have to find that Mr. Nichols was not present but a few minutes and deposited not to exceed 5 or 6 ballots. The last witness puts it 2 or 3. Nichols himself puts it 5 or 6 or 7.

The evidence shows that Nichols did this at the request of one of the aldermen—Mr. Knowles, and there is certainly nothing in the evidence anywhere which could lead one to think that anything was done there by Mr. Nichols for the purpose of wronging any candidate for office.

It is true that our statute forbids any candidate for office acting as an inspector, but our court has not yet held that this particular provision is so mandatory as to vitiate the entire poll of a precinct under such circumstances as is shown here.

Contestant again invokes the authority of the Kirby case in his claim that this precinct should be thrown out.

It would simply be an outrage in our judgment to deprive Contestee of his majority of 54 in this precinct for the reasons claimed by Contestant. As we have intimated in other places under different headings, we will insist later on, that even if it be held that this Kirby case could technically be applied to these facts, yet that it is the duty of this Committee and this House to overlook this trifling irregularity so long as there has nothing been shown to indicate fraud or intentional wrong, and as long as there is nothing to show that Contestee received a single vote that did not belong to him or that Contestant lost a single vote that did belong to him.

We are constantly surprised by statements of Contestant in his brief. He closes his argument in relation to this precinct (brief, page 12) with the following language:

"The whole precinct must be thrown out, as the testimony shows that Mr. Nichols was depositing ballots from an hour to an hour and a half."

When preponderance is taken into consideration, as it surely must be in this as in any other case, how can anyone claim with any show of candor that the testimony shows any such thing? True, one witness did testify to that fact—though somewhat uncertainly—while three or four denied it positively and fixed the time at about a few minutes. Contestant has had too much experience as a lawyer to candidly claim that he has proven this fact

by the single witness Overmyer, as against the positive testimony of the members of the board who knew the facts and who squarely contradicted Overmyer on this point. We therefore most sincerely deny that the votes of this precinct should be eliminated, but insist that Contestee should have the benefit of his 54 plurality over Contestant, leaving him still 116 plurality.

V.

Carmel Township, Eaton County.

The complaint made in regard to this township may be stated in a few words: It is to the effect that the election board permitted a count of the ballots in the afternoon before closing time at the polls; of the ballots that had been cast in the precinct up to about 2 o'clock in the afternoon. Contestant cites numerous sections of our statute which he claims have been violated in this precinct. He assumes and takes the privilege of saying, that the provisions violated here in this township are all mandatory provisions. In fact, we assume from the argument of Contestant that he claims that all the provisions of our election statute are mandatory. If this be accepted as true, we shall have occasion to show before we get through that Contestant will suffer as much or more from the application of such a rule as Contestee. We shall show later on that many hundreds of votes will have to be deducted from Contestant's vote if it be held that all the provisions of our statute are mandatory.

Now, in this Township of Carmel we find an honest election board made up of men who are not educated in the construction of our statutes, and if they were they would be apt to differ on what the statutes mean, holding an election and honestly trying to ascertain the honest result. In this precinct, as in nearly all the others, Contestant contents himself with subpoenaing one or two witnesses, upon whose testimony he assumes this Committee will act; though it must be admitted that there is nothing in the testimony of the witnesses he did subpoena which differs very greatly from the testimony of the witnesses subpoenaed by the Contestee.

Willis A. Case was the only witness produced by Contestant to give evidence of what occurred in Carmel Township at that election at that day. It seems that about 2 o'clock in the afternoon this ballot box got full, so that they could not get in many more ballots, it being a patent ballot box that worked with a crank.

It probably would have been better if they had provided another box rather than to empty this one out and count the votes, but as the Record shows, it was all done in the most absolute good faith and with the best of intentions. Let us now examine the evidence in this particular precinct, as developed in the testimony which Contestee produced.

Cortez Cushing was one of the witnesses produced by Contestee and he testified that he was a Democrat in politics, that Contestant had subpoenaed him as a witness, but after having interviewed him he was not sworn by Contestant. He acted as challenger of the Democratic party in Carmel township on this day. In the afternoon witness was sworn in as an inspector and helped count the ballots, and also one Wm Clements was sworn in. Witness testified that the ballot box was full and it would take about so many to finish up the votes with and that Mr. Huber asked witness if he would help count the ballots if they opened the box and he said he would. The box was a metal box about 14 or 15 inches in diameter and about 2½ feet high. It works with a crank attached with some rollers which rolls the tickets through into the box. It works something like a clothes wringer. (R. 269).

This witness further testified that one Julius D. Ellis was there that day, was a prominent Democrat and a candidate for register of deeds at that election; witness heard Mr. Huber ask him what he thought about opening the box. (R. 270).

This witness proceeds then on page 270 of the Record to go on and tell what they did. Mr. Huber read the names off the tickets and Mr.

Clements and witness kept account in a tally book. He testified that the number of votes received by the different candidates were correctly counted; that they tallied correctly as the names were read to them. (R. 270-271). This witness testified that they all did the best they could and there was no fraud that he knew of. (R. 271).

Gordon Griffin, the supervisor of this township was called as a witness by Contestee and gave his version of what occurred that day. He testified that the ballot box had been locked up with the clerk since the last election and that so far as he knew it contains the ballots that were deposited there the day of election. (R. 282). We wish to call attention to a colloquy which took place between counsel in relation to this precinct. (R. 282, top) when counsel for Contestee made the offer that the box should be brought in and the votes counted by the election board and that Contestee would abide the result. This proposition counsel for Contestant declined to accede to.

Mr. Griffin, the supervisor, testified that in the afternoon they discovered that the box began to work hard and it was hard to get the ballots in, that the ballots would not go down in there. He testified that a man by the name of Spencer was there who was a Democrat and that this Democrat suggested to witness: "You will have to take the 2 o'clock count, won't you? * * * We do it in cities." (R. 283).

He testified that it was talked among the members of the board and that finally they concluded to take the 2 o'clock count. He says that Mr. Cushing was sworn in by Wm. Huber, Justice of the Peace, and that also Mr. Clements was sworn in at the same time to assist in this counting. (R. 283-284). This witness also testified that he consulted with Mr. Ells, the Democratic candidate for register of deeds, and that Mr. Ells said that as far as he was concerned it would be all right; witness asked Mr. Ells whether it would be all right to put Mr. Cushing in as clerk and that Mr. Ells said it was; that these two men, Cushing and Clements, were chosen by the board.

Wm. L. Huber was also called as a witness for Contestee and testified in relation to this matter in Carmel township. He testified that he knew the ballot box was being filled and described how the ballots were put in the box. He says they talked the matter over with those present and that there was a number present, among them, Mr. Spencer, who was a Democrat. He testifies that they discussed this with Mr. Ells, the Democratic candidate for register of deeds; and that this count was ordered in the afternoon for the purpose of finding some means to get along with the emergency they had. Witness continues:

"We concluded the best way was to call in several extra clerks and proceed with the count, so I swore in Wm. Clements and Cortez Cushing as extra clerks, one was a Democrat and the other a Republican. I always had great respect for their integrity."

Record, 291.

Witness continued:

"Mr. Cushing proceeded with the sorting of the ballots, placing the straight Democrats in one pile and the straight Republicans in another and the splits in a third pile. * * * Then I swore in Mr. Clements and we proceeded with the count."

Record, 292.

This witness further testified that he correctly read the ballots and gave to each man his dues.

Wm. Clements was called in behalf of the Contestee and testified that he was a farmer living in Carmel township. He described this incident of counting in the afternoon in substance as follows: That he went up there just after dinner and the supervisor was talking about the box getting so full it was a hard matter to get the tickets in; he heard a little talk after that about emptying the box out and counting them and that D. C. Cole, the clerk, called him and asked him to help count the tickets; that he was sworn in by W. L. Huber, who was a Justice of the Peace. He testified that he and Cortez Cushing did the tallying and explained the

care they took to get it correct. (R. 400-401). He also testified that they tallied the votes honestly and correctly, giving each the votes they were entitled to. (R. 401).

It will be seen that the Contestee spared no reasonable pains to show on the Record precisely what this transaction was. The ballot box got full. The combined wisdom of Democrats and Republicans alike after considerable consultation, determined on the course which was adopted. The count was honestly made—not by Republicans, but by Democrats and Republicans. It seems just a little singular that Contestant saw fit to deprive his partisan friend, Cushing, of the privilege of telling on the witness stand just what occurred there. It is true that the statute provides that the ballot box shall not be opened during the election except as provided by law in cases of adjournments.

And on this language Contestee at once jumps to the conclusion that this is a strictly mandatory provision and if violated the entire vote must be thrown out. We have not in mind now any Supreme Court decisions which hold any such thing. The fact is that Michigan has a law applying, however, only to certain large cities, where 2 o'clock count by the inspectors is permitted. It would seem from this statutory provision that our Legislature has not considered a count prior to the closing of the polls such an extraordinary vital and important thing, or else they would never have passed a statute permitting it in certain places.

So far as the conditions found and which appear in the Record in relation to the township of Carmel, there certainly has not as yet been made a decision in our Supreme Court holding that the law forbidding the opening of the ballot box before the polls closed, to be mandatory, and if violated to vitiate the election.

During the counting of these votes there sat there to guard the rights of Contestant a good, honest, able Democrat. It strikes us that it is absurd for Contestant to claim that he was in any way damaged by any action of the board there that day.

As we have shown Contestee offered to open up this ballot box and count the votes; but Contestant would prefer to reply upon co'd technicalities to exclude the vote rather than to frankly come forward and say: "I want no votes only such ones as were cast for me, and therefore we will just see how it stood."

It will be remembered in this connection that Contestant was present at the meeting of the county canvassers in Eaton county and protested against the returns of several of the townships complained of; but was overruled there by the board which was made up of a majority of his partisan friends. All we ask is fair play and we believe we are going to have it at the hands of this Committee and the House.

We respectfully ask that the evidence be examined in each one of these precincts complained of, and when it is examined only one conclusion can be reached and that is, that Contestant has had a square deal all the way through.

We are surprised that Contestant should be satisfied and contented to gain a seat in Congress on the barest, coldest kind of technicalities, without being able to convince any candid man that he had been deprived of a single vote.

We therefore insist that the 55 plurality which Contestee received in this township should remain standing to his credit, and not be thrown out on any such evidence as is here presented by Contestant.

VI.

Winsor Township, Eaton County.

Contestant proposes to have the township of Winsor thrown out, where Contestee received a plurality of 92 votes. Before entering into a discussion of the merits of this proposition we wish briefly to call attention to the fact that this township was not mentioned in Contestant's original Petition

and Notice of Contest, but as a matter of fact the time for taking testimony on both sides had fully passed, except that Contestant still had a short time left in which to take evidence in rebuttal. Confessedly the taking of evidence in relation to this township was no rebuttal.

We realize and concede that the House has the authority here to consider the alleged irregularities of this township in spite of the fact that it was not in the original Notice, and in spite of the fact that the time for taking evidence had gone by before Contestant was notified in relation to this matter. We say this because we take the position that the House has unqualified power and authority to not only regulate the manner of presenting these contests but to decide them on their absolute merits irrespective of any other authority, court or other functionary; so we say that while we concede the power to permit Contestant to bring in this township at this late day, we simply ask whether under all the conditions here such practice is fair to Contestee.

It is true that the ballots were not initialed at the precise place provided for by the statute according to the evidence of the witnesses produced. The law provides that these ballots shall be destroyed when the box is needed for subsequent elections. In Michigan an election is held on the first Monday in April and one was held on the first Monday of April, 1913, at which time it was discovered that these ballots had been initialed on the perforated corner instead of just below it. The ballots had been destroyed. The proof—the best proof of this fact had gone up in flames, and when Contestee's time for taking testimony had fully passed this new precinct is brought forward and we are asked to answer the claims of Contestant in relation thereto.

True, Contestant proposed that the time might be extended for Contestee to answer this testimony, but we apprehend that it would be no more than fair to say that a Contestant's main case should be closed at the time limited by law for the closing of his testimony in chief. It has been held that the original Petition and Notice of Contest may be amended, but we apprehend this was most generally in cases where an amendment was asked before the expiration of time for the taking of testimony. We are quite sure that it would be no more than right for this House to say that when the time for taking testimony in chief has gone by for both sides, that neither side shall be allowed to introduce new issues and new matters.

But assuming that the House will give consideration to this precinct, let us briefly review what the witnesses produced by the Contestant said in regard to this election. It was said by one witness on page 172, of the Record, that this was an honest and fair election and when the ballots were counted up there was an honest count made of them; that Contestant received credit for all the votes cast for him, likewise Contestee. Again on page 176 of the Record, it appears by the testimony of another witness that it was an honest straight count, all the candidates given the correct count of the votes cast for them.

Again on page 178 another witness testified—the one who initialed the ballots—that he did so thinking he was obeying the law; that he was acting in good faith in putting the initials there; that he supposed that was the lawful place and that it was an honest election. To the same effect is the evidence in relation to it found on page 180 of the Record.

When it is understood that our legislature has several times changed the place where these initials should go, it is not to be wondered at that the average untutored election board should get confused as to which is the proper place, unless they look the matter up each time carefully after an adjournment of the legislature.

This election board was so careful about these perforated corners that they put them in another box and saved them. Prior to the amendment of this section requiring the inspector to write his initials in ink on the lower left hand corner of the back of each of the ballots and not upon the perforated corner, our statute provided that the initials were to be written in ink on the upper left hand corner of the back of the ballot.

It was further provided that no ballot which is not endorsed with the initials of the poll clerks as provided in that act should be void and should not be counted.

The Supreme Court of the State of Michigan in the case of

Horning vs. Board of Canvassers of Saginaw County, 119 Mich., 51,

in construing the statute which was in existence at that time, being Act. No. 190 of the Public Acts of 1891, held that the ballots should not be rejected where inadvertently the inspector had endorsed the ballot in the lower right hand corner instead of the upper left hand corner, holding that so much of the statute in regard to the particular place of the endorsement being directory only.

It seems to us that the language of the present statute is so similar that it is hard to distinguish, but under which it has been held that the ballots should be excluded if they were initialed on the perforated corner. It strikes us in effect that our Supreme Court practically, if not actually, reversed itself in these two cases—that is, holding in the 119 Mich. that the place where the initials should be placed was merely directory, and holding in the 161 Mich. that such provision in the statute was mandatory. It strikes us that the only difference in the two provisions is that in the former it was provided where the inspector should *not* place the initials, while in the later statute it has been provided that he shall not place the initials upon the perforated corner.

But be that as it may, the Record shows here that neither one of these parties was damaged or benefitted by this irregularity, and we shall insist, as before stated, that even if it be held that the ballots of Winsor township could be thrown out by reason of this decision in the 161 Mich., cited and quoted from by Contestant in his brief (pages 16 and 17), yet that this harsh rule should not be applied by the Committee and the House in this case—it not appearing that any fraud or intentional wrong was done, and that it not appearing that anything occurred there which in any manner changed the result of the election, or affected either candidate one way or the other. As before stated, we shall have occasion to cite some precedents and authorities bearing upon the proposition that the House is not bound by state laws and decisions in deciding congressional contests.

VII.

Second Precinct, Second Ward, Battle Creek, Calhoun County.

As we understand it, this is the last precinct relied upon by Contestant to unseat the Contestee in this contest. As has been before stated, the chairman and perhaps the strongest man on this board of county canvassers, was a Democrat. He testified at great length on what occurred there in relation to these returns from Battle Creek. We call attention to the testimony of the different witnesses summoned by Contestee in relation to this precinct. This testimony will be found in the main between pages 439 and 470, but it can be summarized in a very few words.

When the returns were made from this precinct it was found that from governor down, none of the candidates had received credit for the straight votes cast in the precinct, and as it effected the parties to this Contest the returns show that Contestant had received only 23 votes and the Contestee had received 31 votes. This was an obvious error as the total vote of the precinct was something like 370 or more. The question then was, what to do. The board was in session at the city of Marshall. Contestant appeared there and Contestee was there—perhaps not on the same day—discussions were had pro and con and finally it was decided that the county clerk should summon this election board to make a corrected return. They came all in the presence of the board of county canvassers, the boxes were opened and two significant bundles of ballots were found which had marks on the outside; one bundle being marked "R Straight" (meaning Republican straight), while the other bundle was marked "D Straight" (meaning Democratic straight). On the one bundle were the figures 66 and on the other bundle were the figures 38. This added to the vote of each party to this contest, making the Contestant 61 and the Contestee 97, which was undoubtedly correct.

After this the controversy continued and this board was sent for again, the box again opened and further investigation made. At this second meeting a memorandum was found which contained the requisite information. This memorandum was identified by one of the members of the board—that he made it and placed it in the ballot box. This memorandum corroborated the figures heretofore found on the two bundles of ballots, viz., it corroborated the conclusion the Contestant had received 38 straight votes and 23 split votes, making a total of 61; while the Contestee had received 66 straight votes and 31 split votes, making a total of 97.

The Contestee, therefore, had a plurality in this precinct of 36 votes. Now it is the claim of Contestant as we understand it, that this canvassing board had no authority to make this change, or rather that the election board of the Second precinct of the Second ward of the city of Battle Creek had no authority to correct its returns.

It strikes us that no broader authority could be imagined than what is given the board of county canvassers to correct returns of this character than is given by Section 3665 (Sec. 239, Exhibit 67) of Michigan Compiled Laws of 1897, quoted in full in Contestant's brief, page 20.

To sustain his contention Contestant cites the case of

Roemer vs. Canvassers, 90 Mich., 27,

where some strong language is used relating to the scope of authority of the board of canvassers under the statute as it then existed. It strikes us that it was a trifle unfair for Contestant to cite the case and rely upon it, just before mentioned. This case it will be seen upon investigation was decided in 1892 before we had any such statute as we have now in relation to the power of the board of canvassers. The statute quoted by Contestant is comparatively a recent one, and it provides among other things language that was not in the law at the time of the decision of the cases cited by Contestant:

"Said board of canvassers are hereby empowered to summon the person or persons having the boxes containing the ballots cast at said election and the keys and seals of said boxes, or having such returns or the poll books or tally sheets used and made at such elections, to bring said boxes, seals, keys, returns, poll books and tally sheets before said board and said board of canvassers are authorized to open said boxes and take therefrom *any books or papers bearing on the count* and return of the election inspectors of such election districts, or the returns of such central counting board, but they shall not remove or mark the ballots therein. Said board of canvassers may summon such election inspectors, or central counting board, before them and require them to make corrected returns in case, in its judgment, after examining such returns, poll books or tally sheets, the returns already made are incorrect or incomplete, and they shall canvass the votes from the corrected returns."

Michigan Compiled Laws, 1897, Sec. 3665 (Sec. 239 of Ex. 67 in this case).

No such language as this was contained in any statute under consideration in the case of Roemer vs. Canvassers, 90 Mich., 27, cited by Contestant, for the simple reason that the Roemer case was decided long before we had such a statute as we have just quoted from.

We think the statute quoted from gives the board of county canvassers and the board of election inspectors abundant authority and power to do precisely what they did in this case. It will be noticed that the statute provides that the board of canvassers are authorized to open the boxes and take therefrom *any books or papers* bearing upon the count and returns, etc. They found some papers, they took them out and from them were able to make a consistent and correct return.

It strikes us as being absolutely absurd to say that under this statute this board of county canvassers exceeded their authority; everything goes to show here that Contestant got a square deal and received in the final count every single vote that he was entitled to, and that Contestee received no more than he was entitled to.

Contestant's vote was swollen by 38 in this re-count, while Contestee's vote was swollen by 66; but in a precinct where 370 votes were cast and only a total of 54 returned for these two parties who were candidates on the Republican and Democratic tickets respectively, showed beyond peradventure that a mistake had been made somewhere by the board of election inspectors. The statute above quoted points out the manner of correcting a mistake of this character, and they did so. Gentlemen of the highest character participated in this correction, and it is surely begging the question to a surprising extent for Contestant to claim that Contestee should be deprived of the 36 plurality which he secured in this precinct. We cannot help but observe in closing that if we are correct in our assumption that Contestant has cited a case, to sustain his contention under this heading, which was decided before we had any such statute with the provision we have quoted here, and did so knowingly, then it might be well to examine very critically any assertion he makes in relation to his claims to a seat in Congress.

Contestant attempts to argue under this heading that the returns being fair on their face, the board of county canvassers had no authority in the premises. The statute says that if it shall be found that the returns are missing, incomplete or *incorrect*, or for any other reason it is found necessary, etc. Certainly the returns here were obviously incorrect when an examination showed that from governor down straight votes had not been counted for anybody on any ticket, but where the precinct, as stated before, showed a total vote cast of something like 370.

Again Contestant insists because this paper which was found in the box was one not necessary to be kept, the board of canvassers had no right to predicate any action upon it. The statute says, "any books or papers *bearing* upon the count." It is Contestant's personal conclusion that because such a paper is not necessary to be kept, that therefore the board can make no use of it.

We are perfectly confident that there is no possible moral or legal reason for challenging the vote as finally canvassed from the Second Precinct of the Second Ward of Battle Creek.

As before stated, we assume and have a right to, that Contestant has abandoned any claim of irregularities in other townships not discussed in his brief, and this completes a review of the precincts which he has discussed.

IRREGULARITIES CLAIMED BY CONTESTEE.

After Contestant had filed his petition or notice of contest, Contestee made answer thereto, which answer will be found in the record immediately following Contestant's petition. The theory of this answer, stated in a few words, was and is that the irregularities claimed by Contestant in his petition were more or less a common thing throughout the entire district at the November election of last fall; that irregularities could be found in precincts which were carried by Contestant as well as those which were carried for Contestee. It is the theory of the answer that if irregularities are to militate against the validity of the election for Congressman, then those precincts which Contestant carried in which irregularities occurred must be thrown out if those carried by Contestee are thrown out.

To state it in other words, the Contestee does not claim that there were any irregularities in this election which should affect the vote between them; but simply claims that if the claims of Contestant are to prevail, and certain precincts claimed by him thrown out, which Contestee carried, then likewise the precincts carried by Contestant which have in them irregularities should also be thrown out. It is not claimed by Contestee that any of the precincts in which he found irregularities should be thrown out unless, as stated before, the precincts named by Contestant are thrown out.

It will be claimed and shown that if this rule is adopted, then that Contestee will actually profit by it rather than suffer from it. With this understanding in mind, let us review briefly some of the precincts carried by Contestant where irregularities were found on the taking of this evidence.

I.

Seventh Precinct, City of Kalamazoo, Kalamazoo County.

James B. Chase, one of the inspectors of election in this precinct, testified that the clerk and the city attorney were in the booths two or three different times; that there were several there, that he couldn't say just who they were now, but different ones came into the back door; that there was nothing to hinder them coming right in, that the doors were not locked. (Record, 488).

This witness further says that there were no challengers of either party, and that the voters who received assistance in marking their ballots did not have any oath administered to them. (Record, 489).

B. O. Bush, an inspector of election in this precinct, also testified that he saw women behind the railing, and that a woman by the name of Miss Marsh assisted in handing out ballots to the voters; that she handed the ballots instead of the inspector, and did this several times; that she was in no way connected with the board of election inspectors. (Record, 513). (This fact Miss Marsh in her testimony denies.)

In this precinct Contestant received 196 votes and Contestee 157 votes, giving Contestant a plurality of 39 votes.

II.

Texas Township, Kalamazoo County.

William W. Allen testified that he was one of the inspectors at the election that day, and among other things said that the board went to supper after the polls were closed, and before they had made their count; that they had started the count, but had not finished it. He testified that all the board went to supper; that after they came back from supper they proceeded with the count. (Record, 495).

This witness further testified that voters who asked for assistance and received it were not sworn. (Record, 496).

In the township of Texas, Contestant received 66 votes and Contestee 55, giving Contestant a plurality of 11 votes.

III.

Second District, Kalamazoo City, Kalamazoo County.

Frank A. Newell testified that he was one of the inspectors of election on that day, and testified to a situation as follows:

“Q. Did you see any party challengers in around behind the booths assisting voters there that day?

A. I didn't see them assisting, no, I am of the impression there were.

Q. What did they do? Did they go into the booth with the voters?

A. No, sir; not as far as I know of.

Q. What did you see them do?

A. I didn't see them do anything; I overheard it.

Q. What did you hear?

A. I heard some one call for instructions, and some gentleman on the back of the booth told them what to do; they were perfectly innocent of what they were doing, and as soon as we heard it we stopped it; one of the gate keepers he said was giving instructions back there; when we were told of it we stopped it immediately.

Q. Headed it off, eh?

- A. Yes, sir; as soon as we knew it.
 Q. How long was you back there?
 A. It was not to exceed an hour, anyway.
 Q. Was he in any way a member of the board?
 A. No, sir."

(Record, 499).

In this precinct Contestant received 193 votes and Contestee 124, giving Contestant a plurality of 69 votes.

IV.

First Precinct, Kalamazoo City, Kalamazoo County.

John H. Rockwell, a clerk of the board in this precinct, testified that there were a couple of ladies in the room behind the railing in the voting place; that they were in the same room where the booths were. (Record, 500).

In this precinct the Contestant received 140 votes and the Contestee 93, giving Contestant a plurality of 47 votes.

V.

Third Precinct, City of Kalamazoo, Kalamazoo County.

Norbert Wheeler, chairman of the board of inspectors of this precinct, testified that there were voters who applied for instructions as to marking their ballots; that there were six or seven of them; that they received instructions, and that there was no oath administered; that there were suffragettes at that voting place allowed behind the railing; that there were two of them. (Record, 502).

In this precinct Contestant received 122 votes and Contestee 113, giving Contestant a plurality of nine votes.

VI.

Fourth Precinct, Kalamazoo City, Kalamazoo County.

Charles H. Little, an inspector in this precinct, testified that there were voters applying for instructions as to how to mark their ballots—four or five in number, and that they received instructions or assistance, and that no oath was administered. (Record, 503).

He further testified that there were women behind the railing that day at the polling place; that there was one there all the time, and he thought there was another lady there part of the time; and that they were admitted behind the railing. (Record, 503, 504).

In this precinct Contestant received 194 votes and Contestee 144, giving Contestant a plurality of 50 votes.

VII.

Tenth Precinct, Kalamazoo City, Kalamazoo County.

F. B. Godfrey, one of the inspectors in this precinct, testified that they had applications from voters for instructions as to how to mark their ballots—he thought four or five; that no oath was administered to them.

He further testified that women were behind the railing at that voting place, and testified that he thought it did no harm. (Record, 505, 506).

In this precinct, Contestant received 189 votes and Contestee 115, giving Contestant a plurality of 74.

VIII.

Ninth Precinct, Kalamazoo City, Kalamazoo County.

Frank C. Walters, a voter who was present all day at this precinct, testified that there were voters there who asked for assistance after they got

in the booth, and that they were assisted, but no oath was administered to them. He testified that while there were women there, they were not behind the railing. (Record, 507).

In this precinct Contestant received 175 votes and Contestee 151, giving Contestant a plurality of 24.

IX.

Twelfth Precinct, Kalamazoo City, Kalamazoo County.

Fred C. Waterman, an inspector of election in this precinct, testified that there were voters who applied for assistance as to marking their ballots; that there were about four of them; that he was not acquainted with any of them; that they received the assistance, but that no oath was administered to them.

He further testified that at this precinct they allowed women behind the railing during the day, and that they were in no way connected with the board of election inspectors.

In this precinct Contestant received 122 votes and Contestee 73 votes, giving Contestant a plurality of 49 votes.

X.

Thirteenth Precinct, Kalamazoo City, Kalamazoo County.

Ernest Wise, a member of the election board in this precinct, testified that he saw voters apply for instructions as to how to mark their ballots; that there were four or five of them, and that they received instructions by himself and one other of the inspectors, Charles E. Dill; that they had no challengers of the different parties there; that there was no oath administered to any of the voters who received assistance.

He further testified that there were women sitting behind the railing, that there were five or six of them, and they came in two relays, and remained at the voting precinct all day. (Record, 510, 511).

In this precinct Contestant received 250 votes and Contestee 160, giving Contestant a plurality of 90 votes.

XI.

Fourteenth Precinct, Kalamazoo City, Kalamazoo County.

George Thayer, an inspector in this precinct, testified that voters applied for assistance in this precinct, that there were two anyway, and he presumed there were more; that there were no one he knew; but that they went in the booth and inquired for help, and the chairman of the board and another party went in inside the booth, and what they did there witness did not know; but that he heard no oath administered to any one who applied for assistance; that there were women permitted behind the railing of the voting precinct; that there were two most of the time, and a part of the time three. (Record, 512).

In this precinct Contestant received 179 votes and Contestee 100, giving Contestant a plurality of 79 votes.

We will simply observe, in closing these quotations from the evidence in Kalamazoo county, that the precincts wherein these irregularities occurred gave to Contestant a plurality of 491 votes over Contestee.

XII.

Township of Camden, Hillsdale County.

Frank Fast, one of the inspectors of election in this precinct, testified that when they were counting the ballots in the evening the people came up on the stage if they wanted to, that they did not keep them off, that they tried to do so in the start, and that people could walk right up there, and there were several came up and stood around. (Record, 547).

Harmon Crane, a voter in that township, testified that he was in there while the counting was in progress, and that he saw people on the stage, where they were counting, outside of the inspectors of election; that he was in there twice, and on both occasions there were outsiders on the stage where this counting was going on. (Record, 548).

In this township Contestant received 119 votes and Contester 96 votes, giving Contestant a plurality of 23 votes.

XIII.

Township of Moscow, Hillsdale County.

Miles H. Bleech, a clerk of election in this precinct, testified that one of the inspectors of this precinct did not assist in the count, that he was not able to by reason of his condition.

Witness testified that he heard he had been drinking, but from his appearance he would say he had been drinking. That he saw one Fred Rice behind the railing. (Record, 549, 550).

Lafayette Sigel, another clerk of the election in this precinct, testified that this inspector, Art Smith, in trying to count the ballots, had some of them on the floor, and the table was not large enough to hold them; that he did not assist in the count until it was closed; that one Fred Rice (who was in no wise connected with the board) came inside of the railing while they were counting, and that he picked up one ballot. (Record, 552).

This witness further testified that during the noon adjournment the ballot-box was not kept by any member of the board, but that it was left in the hall at the polling place, but that the hall was locked up. (Record, 552, 553).

In this township Contestant received 102 votes and Contestee 45, giving Contestant a plurality of 57 votes.

XIV.

Township of Wright, Hillsdale County.

O. J. Gleason, the supervisor of the township, and therefore chairman of the board, testified that during the noon adjournment the ballot box was left in charge of the gatekeeper while the board went to dinner, and that the hall was not locked up. (Record, 554).

Jesse Barber, another inspector of election at this precinct, testified that at the noon hour they had an adjournment for the purpose of going to dinner; that the box was left right there, and the gate keeper stayed there.

He further testified that he does not think the box was locked, that he did not have the keys or the seal, and that the clerk had the keys, but that Mr. Gleason, the supervisor, had the seal. (Record, 552).

In this precinct Contestant had 200 votes and Contestee 83, giving Contestant a plurality in this precinct of 117.

XV.

Township of Cambria, Hillsdale County.

Kay Smith, a clerk of the board of election in this precinct, testified that one Payne assisted in checking, but that he was not sworn in as an inspector or clerk; that he remained with the board and assisted in checking until the canvass was completed. (Record 572, 573).

Payne himself testified on this subject as follows:

"Q. You were not sworn before you commenced tallying?

A. No, sir.

Q. And had not been sworn to attend and act as clerk or inspector up to that time?

A. No, sir.

Q. Now, you tallied for Mr. Fink and in his place for about how long?

A. I should judge an hour.

Q. Did you tally for anybody else?

A. Yes, sir.

Q. Who?

A. Mr. Smith.

Q. He was the other clerk of the election?

A. Yes, sir.

Q. How long do you think you tallied for him?

A. Well, of course, I don't know, I can't call to mind offhand. I should say I worked an hour for Mr. Fink and was off an hour, then took Mr. Smith's place possibly an hour; I will not say." (Record, 575).

In this township Contestant received 135 votes and Contestee 70 votes, giving Contestant a plurality of 65 votes.

XVI.

Township of Reading, Hillsdale County.

Jay Campbell, one of the inspectors of election, testified that they held the election in the village hall, and that it was upstairs; that the ballot box in that precinct became filled up so they had to get another box, and they had another box brought; it was a wooden box, nailed up, with a slot cut into the top; but that there was no lock on this box. (Record, 576).

The witness further testified as follows:

Q. Were there any electors to whom their votes were delivered by the members of the board at any other place than within the railing?

A. Yes, sir.

Q. Go ahead and tell the circumstances of that.

A. Well, our election took place on the second floor.

Q. In the town hall?

A. Yes, sir, in the village hall. They could not get up there and they had spoken to some one and asked if there was not some way they could vote.

Q. That question came up before the board?

A. Yes, sir; and they agreed, all the challengers, did, and there was no objection made whatever.

Q. After that had been determined by the board, what was done with reference to providing them with ballots?

A. The two challengers went down, and myself, and Mr. Northrop, I think, and I took the ballots with me, three in number, and they were on the sidewalk at the foot of the stairs, and they voted there, and their ballots were folded up and handed to the clerk.

Q. What did he do with them?

A. He put them in the ballot box, handed them to the chairman.

Q. Took them back upstairs?

A. Yes, sir.

Q. And put them in the ballot box?

A. Yes, sir; I remember they were put in the ballot box."

(Record, 576).

This witness further testified that several voted who were not registered. (Record, 576, 577).

This witness further testified that possibly the gate-keeper might have helped unfold some of the ballots when they were counting in the evening, that his best recollection was that one of them did assist in that way. (Record, 577).

E. R. Galloway, the supervisor of the township, and therefore chairman of the board, testified on this subject of distributing ballots on the street as follows:

"Q. During the day, was there an application for the right to vote on behalf of certain men who claimed they could not get up in the polling place?

A. Yes, sir.

Q. How were they permitted to vote, if they were permitted to vote?

A. The request was made by a man who stood outside of the railing, and the question was put to the board whether they would allow them to vote, and the board consented. The question was put to the challengers, and they consented. Then I told the senior justice, and the next justice of the peace, who would be deputy clerk, and the challengers, to go down on the street and take the ballots."

(Record, 585).

In this township, the Contestant received 183 votes and the Contestee 122 votes, giving the Contestant a plurality of 61 votes.

We also call attention to the irregularities in the First Ward of the city of A'blon, Calhoun county, (R. 467-468); also irregularities in the Second Ward of the same city, (R. 476-477); also irregularities in the Fourth Ward of the same city, (R. 484-485), all three of which wards gave Contestant a plurality. These irregularities refer to the carrying of the ballot box before the board had gotten through with their work in making up the returns of the election in these precincts.

Reviewing just a moment the irregularities in Hillsdale County, we find that the townships reviewed gave Contestant a plurality of 323 over Contestee. This number added to the pluralities given Contestant in the precincts reviewed in Kalamazoo County, which was 491, makes a total of 814 votes in the two counties are claimed by Contestee in townships carried by Contestant.

We have thus reviewed briefly the evidence relating to these irregularities. As stated before, it seems that Contestant takes the ground that substantially all of our election law provisions are mandatory, and that if violated, however innocently, the poll of the entire precinct should be thrown out.

We wish to call your attention to some provisions of our statute which have a bearing upon the irregularities enumerated on behalf of Contestee here, and which Contestee claims should be operative to exclude the vote of such townships, providing, of course, as stated before, that the different sections of the statute invoked by Contestant should be held to be operative to exclude the vote of townships and precincts carried by Contestee.

Our general election law provides as follows:

"In all townships and all voting precincts in cities, the township board of each township, and the various officers whose duty it may be to designate and prescribe the place or places of holding general elections in the several cities, wards, election districts, and voting precincts throughout the state, shall provide for and cause to be erected in the room where elections are to be held a railing or fence four feet in height, which railing or fence shall be placed through and across the room, and shall cause gates to be erected in said railing. The entrance gate shall be in charge of a gate-keeper appointed at the opening of the polls by the board of election inspectors, and duly sworn to allow no person to pass through said gate and enter said railing except as otherwise provided in this act, except to vote or to assist some elector in the preparation of his ballot, as provided in this act, and no person shall be allowed to be inside of said railing, except to vote, or to assist an elector in the preparation of his ballot as hereinafter provided," etc.

Section 3631, Miller's Compiled Laws of Michigan. (Being Section 21 of Exhibit 67 in this case).

And further it is provided by our statute, in referring to the duties of the gate-keepers:

"They shall have charge of and keep the gates at polling places and shall not allow any person to approach within the railing provided for in section sixteen, except those authorized by law, and qualified electors, whom they shall allow to pass through the gates and approach the ballot box or boxes for the purpose of voting; and they shall admit one elector at a time only to vote, and shall cause said elector to retire without the gate and railing as soon as he has voted; and no person shall in any manner interfere with a gate-keeper of election in the discharge of his duty, and it shall be unlawful for the gate-keepers to aid, assist, suggest, advise or entreat an elector to prepare his ballot in a particular manner, or to coerce or attempt to coerce an elector in any way to vote or to refrain from voting for any particular person or party," etc.

Section 3649, Miller's Compiled Laws of Michigan (being Section 89 of Exhibit 67 in this case).

Again, our election law provides:

"No ballot shall be distributed by any person other than one of the inspectors of election, nor in any place except within the railing of the voting room, to electors about to vote, and no ballot which has not the initials of a member of the board of election written by such member on the back thereof shall be placed in the ballot box."

Section 3640, Miller's Compiled Laws of Michigan, (being Section 80 of said Exhibit 67 in this case).

In speaking about what shall be done with the ballot box at the time of the noon adjournment, we call attention to

Section 3637 and 3638, Miller's Compiled Laws of the State of Michigan, (being Sections 27 and 28 of Exhibit 67 in this case).

It will be seen by these excerpts of law which we have quoted that it is held by our statute absolutely unlawful to permit any person behind the railing except those authorized by the statute, legal voters, etc. Is this provision mandatory? We apprehend that contestant will claim that this particular provision is not. But it strikes us that if the different provisions of the law relied upon by contestant are to be held mandatory, then most assuredly this provision prohibiting unauthorized persons to go behind the railings and be and remain there is mandatory. We insist, therefore, that these irregularities having been showing in these different precincts on behalf of Contestee, and the evidence in relation thereto being substantially wholly uncontradicted; that Contestant should be deprived of the 491 plurality which he received in the county of Kalamazoo, where this practice of permitting others besides those legally authorized to be there to be and remain behind the railings of the election place, prevailed in quite a large number of precincts, as we have shown by reference to the record.

Now, it will not be fair, and we apprehend it will not be done by this Committee, to hold portions of our statute mandatory on one side and not upon the other. It may be urged that our Supreme Court has not yet held this particular provision (relating to others being behind the railing) to be mandatory; but have we not a right to conclude judging from other holdings by our courts, that they would so hold if this precise question came up before them?

We are not unaware that Contestant will claim that we have a statute which justifies this conduct, being Section 28 of Act No. 190, Public Acts of 1891, as amended, which provides, in substance, that at every election each of the political parties, and any organization or committee of citizens interested in the adoption or defeat of any measure to be voted for or upon at any election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, shall have the right to designate and keep not exceeding two challengers at each place of voting, who shall be assigned such positions immediately adjoining the inspectors inside the polling place as will enable them to see each

person as he offers to vote, and a seat and table or desk on which he may write within the railing shall be furnished for the accommodation of one of such challengers, and he shall have the right to inspect poll lists," etc.

An examination of this statute will show that it contains this proposition: that each political party, or any organization or committee of citizens, shall have the right to designate and keep two challengers at each place of voting, etc.; that one of such challengers may go inside the railing, and the other have a position assigned immediately adjacent to the inspectors.

The statute goes on to provide what the credentials of such challengers shall be; that they shall be signed by the recognized chairman of such committee or organization interested, etc. No such course as this was adopted in Kalamazoo city, where these objections are raised. There were no challengers appointed. They came forward with no credentials. These ladies, while what they did was done perfectly innocently, and with the purest of motives, had no more business behind those railings than any citizen of Kalamazoo city. Understand, now, we do not claim that these precincts should be thrown out unless this Committee and the House shall throw out other precincts where no worse conditions existed than existed in eight or nine of the precincts of Kalamazoo city, as we have shown by the evidence. We cannot see how counsel can claim that the statute above referred to can in any way cure this trouble. There is a way pointed out in this statute how certain persons may have the right and privilege of being present at such elections, and one of them at least behind the railing. This statute was absolutely ignored; and, as stated before, we cannot see how this would change the election statute which provides no one shall be admitted behind the railing.

We have also quoted the law above referring to the distribution of ballots. Contestant claims that the township of Sunfield should be thrown out by reason of the provisions of Section 30 of Exhibit 67 in this case, because Albert Sayre, who was an authorized person, distributed ballots. But it must not be forgotten that this same section provides that these ballots shall not be distributed in any other place excepting the voting place. And calling attention now to the fact that in the township of Reading some of these ballots were distributed downstairs and on the streets, if Sunfield is to go out, why should not the township of Reading go out, which gave Contestant a plurality of 61?

Much has been said about the unauthorized handling of ballots by persons who had not been duly sworn, and assisting in the count, &c. If the rule is to be applied against Contestee, what about the township of Cambria, where a total outsider, D. Payne, assisted the board in the count? In this township Contestant received a plurality of 65.

It will also be remembered that in the township of Reading, already referred to, which Contestant carried, a gate-keeper assisted in the count.

And so far as the care of ballot-boxes were concerned, the statute is very strong if literally interpreted and held to be mandatory. In the township of Wright, where Contestant received a plurality of 117, the ballot box was left in the care of the gate keeper during the noon adjournment, and the hall was not locked. If these provisions of the statute are mandatory, and should be applied in this case, then should not the plurality of 117 which Contestant received in the township of Wright be thrown out?

If it is unlawful to have others besides voters and officers behind the railings during the election, then there was an irregularity in the township of Camden, where outsiders were permitted to mingle with the officers who were counting the vote, and the 23 plurality of Contestant thrown out in that precinct.

We also call attention again to the conditions which existed in the township of Moscow, where Contestant received a plurality of 57, where one of the inspectors became intoxicated, as we think the evidence fairly showed, and an outsider came in behind the railing (Fred Rice) and did more or less meddling, though he was totally an outsider, with no authority whatever for being there or for participating in the least.

Now as to the point of swearing illiterate voters, &c. It is true the statute provides, as claimed by Contestant, that before a voter is rendered

assistance he should be sworn, except in cases where his disability is apparent to the board. We have simply to say on this point that if this rule is invoked by Contestant as a mandatory one, then as shown by the Record Contestant will lose more votes by the application of this statute as a mandatory one than will the Contestee. We have shown more voters who were permitted to vote in Kalamazoo County in precincts carried by Contestant than Contestant has shown in Eaton County or any other place.

But, as we understand it, Contestant claims that such votes should only be withdrawn to the number of actual infractions of the law. If that rule were followed, we apprehend that Contestant would suffer more from its application than would the Contestee.

We do not believe, however, that Contestant will insist upon this point, as it most certainly operates with greatest severity upon him.

We have no sympathy with the contention that an election board must under all circumstances complete the count without any recess or other adjournment; at least, we do not believe any court would throw out a precinct where such action had been taken in good faith. We do not believe there is anything in the law which would throw out any precinct because the canvass had not been begun immediately after the close of the polls and continued until all the votes were counted.

Considerable is said by Contestant about the adjournment that was had in the township of Sunfield (which we have shown was only a brief one) but in the township of Texas, a township carried by Contestant, we have shown an adjournment was had (Record 495) before the completion of the count.

Considerable complaint is made by Contestant because John C. Nichols deposited some five or six ballots in the ballot box in one of the wards in the city of Charlotte; upon the theory, we presume, that he was an unauthorized person handling ballots. But, as stated before, what about the assistance of D. Payne in the township of Cambria, and the gate keeper in the township of Reading? Those two townships gave Contestant a plurality of 126 votes. To some extent this is true of the handling of ballots in the township of Moscow, where Contestant received a plurality of 57 votes.

We shall close this branch of the case by lucidly stating our position once more.

In the matter of outsiders being behind the railings, Contestee has shown this condition to exist in precincts sufficient to take away from Contestant something like 400 of his plurality, which if transferred to Contestee would increase his plurality to something over 500 instead of 116.

In the matter of the swearing of illiterate voters who requested assistance, the showing made by Contestee is far in excess and more serious than that shown by Contestant, though as to the actual number shown by each we have not now at hand a mathematical compilation; for one reason, because we do not understand that Contestant is insisting on that phase of the case.

In the matter of unauthorized persons handling ballots, it seems to us we have shown that more precincts were affected by this irregularity carried by Contestant than those carried by Contestee; and the number of votes, as we have shown, which should be excluded if such a rule is applied is larger than those shown by Contestant.

In the matter of the care of ballot boxes during noon adjournments, the Contestee has shown that townships carried by Contestant did not live up to the statute in that regard.

The suggestion might be made right here that if irregularities are sought after, we believe they could be found in almost every election precinct in the Third Congressional District of Michigan; and we believe that we are not extravagant in our statement when we say that they could be found in every precinct in the state of Michigan, if not the entire Union.

Contestant asks that the pluralities received by Contestee in the five precincts of Eaton county, and the one in Calhoun, be thrown out. This would be a total of 397 plurality. Contestee insists that if our statute in its several provisions is to be held to be mandatory, so that each precinct where irregularities have occurred be thrown out, then he asks that the several precincts in Kalamazoo and Hillsdale counties, aggregating 814 as the Contestant's plurality, be thrown out, which would still leave Contestee a plurality of something more than 400 votes.

We have made these figures on pluralities rather than taking the total vote for each candidate in each precinct, the result of which figuring would be the same, as we understand it.

Therefore, if the irregularities unearthed by Contestant be set over against the irregularities unearthed by Contestee, so far as any claims are made to date in Contestant's first brief, it would result in leaving Contestee a plurality in his favor still of more than 400 votes, as above stated.

We want to repeat, however, at this point, as we have many times said, that there is nothing in any of these precincts of a venal or fraudulent character which throw out any of them; nor has there been discovered any honest error which makes one single difference in the vote, except that Contestee should have the 11 plurality in the township of Climax, Kalamazoo county; the error in the township of Calhoun having been corrected by the board of election inspectors and the county board of canvassers, it should stand as canvassed, giving Contestant a plurality of 36 votes in that precinct.

PRINCIPLES OF LAW, PRECEDENTS, RULINGS, ETC., WHICH WE CLAIM ARE APPLICABLE TO THE VARIOUS QUESTIONS RAISED IN THIS CONTEST.

I. Effect of State Laws and Decisions.

It will be remembered that in another place in this brief we have intimated that we would have something to say as to what effect, if any, a state law or a Supreme Court decision should have in controlling the decision in a matter like this. The Constitution of the United States provides that the House shall be the judge of the elections of its members; true, it further provides that the state shall prescribe the times, places and manner of holding these elections. It is our purpose to take this language and give it the only construction which in our judgment can consistently be given it, that the House is the sole, only and final arbiter of controversies of this character; that is, the House is the place of original, conclusive and final jurisdiction to decide whether Contestant shall gain this seat, or whether Contestee shall hold it.

We might say at this point that we do not for one moment intend to show any disrespect or lack of appreciation of what the highest court in our state has said as to these statutory provisions being mandatory, and as to what they have said in given cases about excluding the vote of an entire precinct for certain irregularities; but we insist that, even if it be found, as before stated, that certain decisions of our Supreme Court would be in line with the contention of Contestant here, yet that when it appears, as it does here, that not a single vote was given to Contestee, and not a single vote was lost by Contestant, then that this Committee and this House will not be bound by decisions the application of which would be to work an injustice upon the Contestee in this case. Precedents and rules of law are valuable; but, as stated before, we do not believe they will be used for any other purpose by this Committee and this House than that of an advisory character, or to throw light upon how the law has been construed and how it should be construed in the given cases. And we will go further, and say that we think it fortunate, and think it just, that the house is not bound by the various laws and the various decisions in the different states of the Union in matters of this character.

We say this for this reason: that it is a conceded fact among lawyers and men generally that while it is necessary that a rule of law should apply to all cases alike, yet that it operates justly in one instance and very unjustly in others. This House has the opportunity, within its undisputed functions, then, to relieve this case from the hardship which a rule of law laid down by some court in some other case would visit upon the Contestee here.

To make ourselves plain: we believe in precedents and laws regulating elections, but we insist that if the doctrine laid down in the 161st Michigan in the Reinhart case be applied here in throwing out all the votes of Winsor township, and if the doctrine contended for in the Kirby case in the 120th of

Michigan be applied here, and all the votes of Sunfield township be thrown out, the result would be an injustice to Contestee, and the seating of one who never received a plurality of the votes cast in this district. We say injustice, because there is no rational or reasonable claim, nor not one line, word or syllable of evidence, as said so many times herein, that Contestant was deprived of a single honest vote or that Contestee received one single dishonest one.

We say, therefore, that if it be conceded for argument's sake, and for that alone, at this point, that these decisions would control such controversy in Michigan, yet, as we have before pointed out, it does not bind this Committee or this House, and they are perfectly free to render a just decision between these two applicants to this office, for the reasons pointed out heretofore, and which will be referred to later on.

We must not omit to state here, however, that in the Kirby case, which Contestant claims controls the Sunfield vote, quite a different state of facts existed, as we have shown before, and we will not take up the time at this point in the brief to say anything more about it.

It strikes us that we have a very fresh precedent on the point now under discussion. We refer to the contested election case of

McDonald vs. Young,

heretofore disposed of at this session of Congress. In other words, it is not necessary to go back and review the numerous cases which have come up before this House for decision, in order to find authority that in a given case, where justice demands it, state laws and state decisions do not control. The facts of this case are so fresh in the minds of this Committee that we will take no time in rehearsing them. From our viewpoint if the decision in Michigan had been followed, there is at least a serious question, but what an injustice would have followed in that case, and a different decision made. There is at least a serious doubt whether under the decisions in Michigan, the 548 votes cast for McDonald in Ontonago county could have been counted for him; and as we understand it the House Committee which had this contest under advisement itself doubted whether or not the name of Sheldon William J. McDona'd was not so dissimilar to the name of William J. McDona'd, that the votes cast for the former could not be counted to the latter under the Michigan Supreme Court decisions. It must at least be conceded that our decisions in Michigan very strongly tend to such holding; and if such decisions had been followed in the McDonald case, would it not have resulted in depriving that Michigan district of having the man who the most voters had honestly chosen at the polls? The application of the rule laid down in the cases cited below then, to the McDonald case would have resulted as nearly everybody concedes in an injustice to McDonald. These are the cases:

Toby vs. McNeal, 63 Mich. 294.

Andrews vs. Judge of Probate, 74 Mich. 283.

People vs. Fox, 114 Mich. 652.

Ott vs. Brissette, 137 Mich. 717.

The Committee on Elections No. 1 of which Hon. J. D. Post was chairman said in its report in the McDonald case favoring the seating of the Contestant:

"Notwithstanding the fact that it is the settled law of the State of Michigan that the intention of the voter can only be determined from the face of the ballot, the House can go behind the ballot to ascertain the intention of the voter; it may consider the circumstances surrounding the election; it can determine who were the candidates; whether there were other persons of the same name residing in the district who were candidates; whether the ballot was printed perfectly or imperfectly, and if imperfectly how it came to be printed."

Committee's Report, page 8.

Now, this language just quoted is we think, in direct conflict with the language used in the decision above cited wherein it was held in

substance, that the intention of the voter must be found absolutely from the face of the ballot.

We have also read with interest the able argument made by Judge Post before the House in this contested case (McDonald vs. Young). Quoting from

Congressional Record of September 2nd, page 4543,
permit us to set forth some of the things he said:

"The power to reject an entire poll is certainly a dangerous one, and though it belongs to whatever tribunal has jurisdiction to pass upon the merits of a contested election case, it should be exercised only in an extreme case, that is to say, a case where it is impossible to ascertain with reasonable certainty the true vote."

McCreary on Elections, Section 44.

Judge Post also quotes from the Virginia election case of McKenzie vs. Braxton, decided by the House in 1872, where it was held that "the House can go behind the ballot to ascertain the intent of the voter, so as to explain what is ambiguous or doubtful. If by the aid of extrinsic evidence that which is ambiguous or doubtful can be made clear and truthful, then no harm can result by resort to such evidence."

Judge Post also quotes from the contested case of
Campbell vs. Morey,
decided in 1884, where it says that

"the intent of the voter ought to prevail whenever it can be ascertained by an inspection of the ballot, and if the ballot is ambiguous, the intention of the voter may be shown."

He further quotes from the case of

Dailey vs. Petroll (10 Philadelphia Reports, 389),
in which it is said:

"The power to throw out the vote of an entire precinct should be exercised only under circumstances which demonstrate beyond a reasonable doubt that there has been such disregard of law or such fraud that it is impossible to determine what votes were lawful or unlawful, or to arrive at any result whatever or whether a great body of voters have been prevented from exercising their rights by violence or intimidation."

It strikes us that the above language just quoted is very significant, and we appeal to this Committee and this House to note the significance of the language as applied to this controversy here.

The same speaker quoted from

Chadwick vs. Melvin, (Bright's Election Cases, 489),
where it is said:

"There is nothing that will justify the striking out of an entire division but an inability to decipher the returns, or a showing that not a single legal vote was polled, or that no election was legally held."

Judge Post quotes from

McCreary on Elections, Section 489,
as follows:

"Nothing short of an impossibility of ascertaining for whom the majority of votes were given ought to vitiate an election, especially if by such decision the people must on account of their distant and dispersed situation necessarily go unrepresented for a long period of time."

We have quoted thus copiously as to what took place in the House at the time the case of McDonald vs. Young came up, because it is the most recent exposition of what the House will be guided by in rendering absolute justice between two contestants for the same seat in Congress. It strikes us that, if it be true that in order to seat McDonald the decisions of our highest court had to be ignored, Contestee can come forward here with a great deal of confidence, claiming that Congress is not bound hand and foot by the decisions and laws of the State from which the contest comes.

In the case of

Lynch vs. Chalmers,

in the forty-seventh Congress, a history of which is found in Hind's Precedents, Volume II., Section 959, et seq., the majority report of the Committee speaks of the duty of the House in following or refusing to follow the decision of a state court. At page 269 of the work above cited, quoting from the majority report, we find the following:

"It is seriously contended by the contestee that the decision of the Supreme Court of Mississippi construing the sections of the election laws of that state ought to be followed by Congress, and that it is against the settled doctrine of both congress and Federal judiciary to disregard local laws. This is too broadly assertive and cannot be maintained. * * * The rule as to all other questions is well stated in *Township of Pine Grove vs. Talcott* (19 Wall 666-667) as follows: 'It is insisted that the invalidity of the statute had been determined by two judgments of the Supreme Court of Michigan and that we are bound to follow these adjudications. With all respect for the eminent tribunal by which the judgments were pronounced we must be permitted to say that they are not satisfactory to our minds. The question before us belongs to the general demand of jurisprudence. In this class of cases this court is not bound by the judgments of courts or statutes where the case arises: it must be heard and determined for itself.'

"There is cited another reason why Congress should not be bound by the decisions of state tribunals in regard to the election laws, unless such decisions are founded upon sound principles and comport with reason and justice, which does not apply to the federal judiciary, and it is this: 'Every state election law is by the constitution made a Federal law where Congress has failed to enact laws on that subject, and it is adopted by Congress for the purpose of the election of its own members. To say that Congress shall be absolutely bound by state adjudications on the subject of the election of its own members is subversive of the constitutional provision that each house shall be the judge of its own members, and it is likewise inimical to the soundest principles of national unity. We cannot safely say that it is simply the duty of the house to register the decrees of state officials relative to the election of its own members. * * * Election laws are or may become vital to the existence and stability of the House of Representatives, and to hold it must show itself open to the natural limit of investigation along the question as to whether an election has been conducted according to state laws as interpreted by its own judiciary would be to yield at least a part of that prerogative conferred by the constitution exclusively on the House itself.'

The report of the committee makes this further suggestion:

"That by adopting the machinery of the state to carry on congressional elections this house stands in the nature of an appellate court to interpret these election laws: that it ought not in this view to be bound by the decisions of the state courts at all, unless the reasons given by them are convincing to the judicial mind of the house acting in the capacity of a court."

The Federal constitution, Art. I., Sec. 5, provides that:

"Each House shall be the judge of the election, returns and qualifications of its own members."

Calling attention to Volume I. of Hinds' Precedents, Sec. 635, we find that the following resolution was introduced on January 21th. 1870, by Mr. Albert G. Burr, of Illinois, which was adopted by a vote of 140 yea to 23 nay:

"Resolved that from the nature of its duties the committee of elections from the house of representatives is a judicial body, and in deciding contested cases referred to such committee the members thereof should act according to all the rules of law, without partiality or prejudice as fully as though under special oath in each particular case so decided."

In the early election case of Spaulding vs. Mead, in the 9th Congress, reported and digested in I. Hinds' Precedents, Sec. 637, this question of the right of the house of representatives to ignore the state laws and rules arose. It is said in relation to this case:

"It was contended on the one side that the house must exercise its right in accordance with the fixed rules of the state of Georgia, that state having the constitutional right to prescribe them, and they being conclusive until revoked by congress. And on the other hand it was contended that the power of judging the returns was different from the state power of determining time, place and manner of elections. The law of Georgia could only be considered as constituting the governor the organ of information to this house, the only tribunal to which the returns can ultimately be made. The fact that the governor had counted only a part of the votes could not prevent the House from counting all of them. The power of the House to judge could not be concluded by a state law or executive."

In the contested election case of Patterson vs. Carmack, 55th Congress, reported by Chester H. Rowell, page 574, of his work, it is said, in discussing the relative authority of congress and state functionaries as follows.

"But in judging of the elections, returns and qualifications of its own members under the grant of the constitution, this house exercises judicial power, is a court of competent and exclusive jurisdiction in passing upon these returns and elections even if no Federal statute is in existence regulating the elections of its members, it interprets and construes the state election laws which for the purpose of such election are to be regarded as having the quality of Federal legislation and the opinions of state judges are only to be adopted so far as they commend themselves by the force of their reasoning and where such decisions are in conflict with its determinations, the precedents established by congress are the expression of the law and must control that court with the same force and effect that its own prior deliberate rulings guide and control any other court."

2. Other Legal Propositions Bearing on Various Precincts in This Contest.

In the election case of
Williams vs. Settle,
reported and digested in

II Hinds' Precedents, Sec. 1049 et seq.,
will be found a case involving certain irregularities something similar to what occurred in this case. One of the objections was that parties other than the officers handled the ballots. In response to this, the committee says that if the ballots were truly counted it would not of itself destroy the election. The committee says that the practice was irregular, and ought not to be encouraged.

(Note—This would have some bearing on the election in Sunfield and Carmel townships in Eaton county, where Contestant claims unauthorized persons handled the ballots).

Another objection was that the officers of election began to count some of the ballots before the polls closed in two of the precincts. We quote from the report of the committee:

"This manner of counting votes is no reason for rejecting it, notwithstanding the statute of North Carolina provides that the registrar and judges of election shall open the boxes and count the ballots after the close of the election. While we think this practice of thus opening the boxes and counting the ballots should be condemned, yet its having been done and the result correctly certified, we think the return should not be rejected on that account. If the statute in express terms required that the votes should not be counted until after the close of the polls, and if they were so counted that the return of that precinct should be rejected, then the statute would be mandatory, and would be compelled to follow its provisions and reject these returns; but as the statute is simply directory, we feel that no injury should result to the public in consequence of this error on the part of the election officers."

(NOTE: We think this precedent very strongly militates against the argument used by Contestant in seeking to throw out the township of Carmel, where they began counting the votes at 2 o'clock in the afternoon.)

Another objection to the validity of the election made by the contestant was that an inspector or judge of the election was a candidate for office in two of the precincts. In Buchanan one R. A. Chandler was one of the judges, and was running for the office of constable. The report says:

"His candidacy for constable did not imply or even create a suspicion that it was to his interests to do anything wrong in the conduct of the election for Congress. His acting as poll-holder could not in any way affect the rights of the parties to this contest. The evidence in this record establishes the fact that the election was honestly and fairly conducted, and the correct result certified."

Speaking of the other precinct where one James A. Bullock received votes for the office of county surveyor, and who was acting as one of the judges of election, the report says:

"The proof in the case shows that the fact that he was one of the judges of election did not have any effect whatever on the result of the Congressional election. The proof is overwhelming that the election was properly conducted and the result honestly certified."

(NOTE: Contestant has claimed in his brief that one of the reasons why the Third Ward of the city of Charlotte should be thrown out was that John C. Nichols, a candidate for circuit court commissioner at that election, acted for a short time in putting the ballots in the ballot box which he received from the voters.)

The law of the state from which this contest arose just quoted from, provides:

"No person who is a candidate for any office shall be a registrar or an inspector of any election."

It strikes us that this is a good clean statement of how a matter of this character should be disposed of. Nichols was invited by one of the inspectors to assist him temporarily by putting a few ballots in the ballot box, which he did. He was soon relieved, and there is not a word, line, or syllable in the record anywhere to show that he did anything out of the way, dishonestly, or committed any offense against the election laws whatever, except that he did act by depositing five or six ballots without having been sworn in for that purpose.

In the New York election case of
 Duffy vs. Mason,
 in the 46th Congress, reviewed and digested in

II. Hind's Precedents, sec. 942, et seq.,
 sec. 943 et seq., and sec. 944, et seq.

the majority report discusses the question as to the responsibility of a candidate where his friends do improper things. Boiled down in a few words, the report holds to this effect:

"In absence of evidence to incriminate him, a returned member is presumed innocent as to the acts of agents of his party. Improper acts by a candidate's friends without his participation are of effect only so far as they are shown to actually have affected the result. A candidate cannot and ought not to be held responsible for the imprudent and censurable acts of indiscreet friends, who, in the zealous advocacy of his election, resort to improper means of securing that result without his knowledge, and which he, if he had been consulted would condemn, unless the voters affected by such means are sufficient to change or render uncertain the result of the election."

(NOTE: Contestant claims that the votes in the Third Ward of the City of Charlotte should be thrown out, mainly because the two inspectors Dunning and Dowdigan did some soliciting votes. We have already shown that as a matter of fact what they did was at most a slight indiscretion, and did not amount to soliciting votes; but if they had, this precedent just cited, it seems to us, would be a just decision in such a case, that a candidate should not suffer by the indiscretion of his friends, unless it was so serious as to actually affect the result.)

We called attention in this brief before to the fact that Contestant's partisan friends are charged by him with having committed irregularities from which he asks relief. We said in a former place in this brief, and we repeat, that we think this fact should be taken into serious consideration in passing upon the merits, viz., that Democratic partisan friends of the Contestant were guilty of perhaps the most serious irregularities in this case. It will be remembered that Albert Sayre, who was sworn in as an inspector in Sunfield, was not only a Democrat, but that kind of a Democrat who votes his ticket straight. He testified that he did so, and voted for the Contestant.

Again, in the Township of Carmel, Cortez Cushing, who assisted in what is known in this case now as "the 2 o'clock count," was a Democrat, and supported the Contestant. These two townships furnish the most plausible argument which Contestant has in this case, unless it be the Township of Winsor, of which we will say a word or two later.

Sayre, of Sunfield, was a Democrat. The chairman of the board was a Democrat. Another of the inspectors was a Democrat. Witherall, one of the men who assisted in the count, was a Democrat. Another was a "Bull Moose" or National Progressive; leaving only two Republicans, as we remember it, on that board.

In the Township of Carmel, Cushing, as stated before, who assisted in that count, was a Democrat.

Now, this question has been up, viz., as to the presumption which exists that partisan election officers do not intentionally err against a person running on their ticket; and it is said in

II Hinds' Precedents, sec. 922.

in the case of

Platt vs. Goods, 44th Congress:

"The doctrine was laid down and sustained that the presumption is that Democrats will not intentionally commit fraud to help a Republican, or vice versa."

We think that good practical politics, whether it is the law or not; and we think it should be taken into consideration in passing upon the merits

of Contestant's claim here, and especially in the two townships of Sunfield and Carmel. We want to remind the Committee and the House again that the board of county canvassers of Eaton County, before whom Contestant appeared and objected to their proceedings, was composed of two Democrats and one Republican; that the principal leading spirit of the county canvassing board of Calhoun County was a Democrat, George Snyder.

3. Irregularities Generally.

"Errors relating to form rather than substance, and not affecting the result, held to be immaterial."

Porterfield vs. McCoy, 14th Cong. C. and H. 269.

"Our election laws must necessarily be administered by men who are not familiar with the construction of statutes; and all that we have a right to expect are good faith in their acts and a substantial compliance with the requirements of law."

Ingersoll vs. Naylor, 26th Cong. 1 Bart. 35.

"Where the inspectors violate the law in adjourning before completing the canvass of votes, such adjournment does not vitiate the poll unless it is shown to have afforded facilities for fraud or that during it the boxes were concealed and tampered with."

Bisbee vs. Finlay (Minority Report) 47th Cong. 2 Ells. 215.

In the contested election case of Frederick vs. Wilson, 48th Cong. reported in Rowell's Historical and Legal Digest at page 413, it appeared that in one precinct the officers of election had opened the box and counted the votes before the time prescribed by law, thus depriving eight or ten voters who subsequently voted of the secrecy of the ballot; but the committee nevertheless counted the votes.

"In a contested election case very little attention should ordinarily be paid to mere irregularities in the proceedings of the election officers which do not affect the real merits of the case."

McCrary on Elections (4 Ed.) Sec. 222.

"But as in most cases that statute simply provides that certain acts or things shall be done within a particular time or in a particular manner and does not declare that their performance is essential to the validity of the election, then they will be regarded as mandatory if they do and directory if they do not affect the actual merits of the election."

McCrary on Elections (4 Ed.) Sec. 225.

"Those provisions of a statute which affect the time and place of the election, and the legal qualifications of the electors, are generally of the substance of the election, while those touching the recording and return of the legal votes received, and the mode and manner of conducting the mere details of the election, are directory. The principle is that irregularities which do not tend to affect results are not to defeat the will of the majority; the will of the majority is to be respected, even when irregularly expressed. The officers of election may be liable to punishment for a violation of the directory provisions of a statute, yet the people are not to suffer on account of the default of their agents."

McCrary on Elections (4 Ed.) Sec. 228.

"There is a difference between a fraud committed by officers or with their knowledge and connivance, and the fraud committed by other persons in this: The former is ordinarily fatal to the return, while

the latter is not fatal, unless it appears that it has changed or rendered doubtful the result."

McCrary on Elections (4 Ed.) Sec. 574.

"But misconduct which does not amount to fraud, and if no one is injured, does not vitiate the poll."

McCrary on Elections (4 Ed.) Sec. 575.

"The fact that persons other than members of the board of election officers are allowed to be in the room with such officers when votes are being received and deposited will not of itself and in the absence of any proof of misconduct on their part, be sufficient to invalidate the return, but the admission of such persons is decidedly improper especially if the persons admitted by the partisans of any particular candidate or ticket and the fact of their presence and misconduct may be shown as circumstances tending to invalidate the return."

McCrary on Elections (4 Ed.) Sec. 580.

"And in Borleau's case tried by the court of common pleas, Philadelphia, it appeared that in the afternoon of the day of election one of the clerks of the election became so much intoxicated as to be unfit for his duties, and at the request of the inspectors, one Samuel C. Cox acted as clerk for the balance of the day, and until about 3 o'clock in the morning of the succeeding day, when the clerk, having recovered of his debauch appeared and signed the returns. Mr. Cox was not sworn and was a candidate for assessor at this election. Held that these facts were not such as should induce the court to set the election aside, and the ground of the decision was, that the evidence did not disclose any bad faith on the part of the officers nor any fraud."

(2 Parsons, 503; Bright on Election Cases, 268).

McCrary on Elections (4 Ed.) 223-224.

Just a word further in regard to the Township of Winsor. It is true that the Michigan decision cited by Contestant is very much in point as to the exclusion of those votes; and we have already shown in this brief that under a very similar statute our Supreme Court held that they should not be excluded.

Horning vs. Board of Canvassers of Saginaw County, 119 Michigan, 51.

We do not speak of this in a criticising way, but simply to observe what we consider are two decisions hardly in harmony with each other on the same subject. But it was shown in the Record that the board of this township was very careful, that they even saved the perforated slip which they tore off; and, as stated before, each one of the parties to this contest received credit for every single vote that was cast for him.

Now, as we have stated above, we say now: we believe that it is the duty of this Committee and this House to overlook bare, cold technicalities, and determine, as we have shown it has been determined in other cases, this question upon the basis as to who actually received the most votes, honestly cast and honestly counted. As was said by Judge Post

(Congressional Record, September 2nd, at 4541).

"This House with its large powers and wide discretion should not be confined within too narrow limits. It possesses all the powers of a court, having full jurisdiction to try the question, Who was elected? It is not limited to the power of a court of law, but under the Constitution possesses all the functions of a court of equity."

Is not this language very significant? All we ask is that it be applied to the facts of this case; and if it is, we are confident that the House will say that while in the Township of Winsor, through ignorance, the election board failed to follow the law, yet there having come no harm or prejudice to the Contestant here, and it appearing that the Contestee gained nothing by it and Contestant lost nothing by it, we will decline to throw out the votes of this precinct. It may be said by Contestant that we are asking the House and this Committee to overrule the law of Michigan. Our contention should not be so construed. We simply say that under the Constitution the House is not bound to be guided by precedents of any character, even its own, but that each and every case should be decided upon its absolute, honest, fair and square merits. The Contestee is asking here for nothing more and nothing less than simply the votes that were honestly cast for him in this district at the November election of 1912.

We will not close this brief without apologizing to some extent for its length; but we feel strongly on this subject. We do not conceal the fact that we have a great interest in the matter. The Contestee, an excellent, upright citizen of this district, and one who has been connected with its business enterprises almost since boyhood, came frankly before the people of his home and asked to be sent to Congress. It is no secret that the campaign of 1912 was a stormy one, where considerable excitement existed, and some very unjust things were said and done by different political parties and their leaders. He was out in this storm, and weathered the blast and came through with a small yet substantial and honest plurality of 116 votes. He feels as though he was the choice of the people of this district; and hence it becomes his duty, not alone for his own sake, but for the sake of the district he represents, to maintain his claim before this House. We believe we are safe in saying that if Congressman Smith believed that he had a single vote which belonged to the Contestant, he would cheerfully and manfully give it up.

We believe, as stated earlier in this brief, that we shall have just as fair a trial as though this jury was made up of Republicans. We believe, as we stated earlier in this brief, that no feeling, impulse or sentiment of partisanship will enter into the decision; but that it will be the desire of all who participate in this decision to simply render such a conclusion as will do absolute justice between these two parties; because, as stated before, we have that confidence in men who have aspired to become and have become Congressmen, that they will look at this contest from only one view-point, and only one standpoint, and that is, Which one of these men received the most of the honest ballots cast in this district?

We close, as we began, with the statement, and we challenge the Record to dispute it, that there is not one single particle of evidence here from which it can be inferred, even, that any fraud existed, that any intentional wrong was done, that anything occurred which would change the result or that either of these parties has a single vote which belonged to the other.

In all the precincts in which Contestant claims irregularities, it appeared abundantly, over and over, as is shown by the Record, that it was an honest election, that each one received credit for every vote cast for him, and no more. We therefore insist that Contestee should retain his seat, having to his credit a plurality of 116 votes over Contestant.

Respectfully submitted,

HORACE S. MAYNARD,
Charlotte, Mich.

W. H. FRANKHAUSER,
Hillsdale, Mich.

GRANT FELLOWS,
Hudson, Mich.,

CONTESTED ELECTION CASE OF CLAUDE S. CARNEY vs. JOHN M. C. SMITH

FROM THE
THIRD CONGRESSIONAL DISTRICT OF MICHIGAN.

REPLY BRIEF OF CONTESTANT.

We do not desire to burden the Committee or the House with a cumbersome reply brief. We shall call attention to a few instances of incorrect statements in the brief for contestee, from which we shall feel warranted in arguing that both this Committee and House should consider the facts in the record, and not the statements in the brief for contestee as the facts in the case.

Counsel for contestee criticise our original statement of facts on page three, for stating that contestee and his attorneys endeavored to suppress a certain affidavit. The comment of counsel for contestee, at the top of page five of their brief, is so unwarranted in the face of the record, that we let the record, from page 249, answer and completely refute their brief.

"Q. If you can find that statement, I wish you would bring it back with you tomorrow. A. Well, I can't do it.

Mr. Adams: I would like to have the witness see if he can find it and come back here tomorrow.

Mr. Frankhauser. Will it do if he sends it in a letter?

Mr. Adams: No. I would like to have him come back tomorrow, too.

Mr. Fellows: There has been no notice given us to produce this paper, and the witness has been here and we are not bound to keep him here two or three days for the accommodation of counsel. The witness is here, and if you have any further cross-examination to make, make it.

Mr. Adams: I will give you notice now to have the witness produce that paper here tomorrow morning at 11 o'clock.

Witness: I can't do it.

Mr. Adams: We give you notice now to produce the original that Mr. Nichols got from Mr. Knapp and also from Mr. Hager, and we give you that notice now; or any statement that he took of any witness or witnesses in Sunfield or Carmel Townships relative to that November 5, 1912, election. We give you notice now to have Mr. Nichols or anybody else who has this to produce them.

Mr. Fellows: We will not produce them. We will let you make oral proof of their contents.

Mr. Maynard: We have no such documents...I haven't, and I have not seen them nor heard of them."

This occurred on March 20th.

The above statement of counsel looks particularly strange in view of the statement of John C. Nichols, under oath, March 22nd, 1913, (R. 320):

- "Q. You went out into Sunfield and got some affidavits, didn't you?
 A. Yes, sir.
 Q. Where are they? A. I don't know.
 Q. What did you do with them? A. I think I gave them to Mr. Smith.
 Q. You wrote the affidavit out, didn't you? A. Yes, sir."

Counsel for contestee in their brief evidently forgot their attitude (at the taking of testimony) for suppressing this affidavit, and we call attention to the persistent and pressing cross-examination of counsel for the contestant, which, on March 25th, 1913, resulted in Mr. John C. Nichols producing the affidavit which counsel for contestee, in their brief, page five, calls a voluntary presentation of this affidavit. If, as counsel for contestee claim, on page five of their brief, that the affidavit was of no importance, why was such a desperate attempt made to conceal and suppress it? The force of the affidavit lies in the unusual effort made by contestee in hiring John C. Nichols to take care of that township, and in the effort of Nichols to take care of it, trying to get an affidavit from all the members of the board which would give the impression that everything was regular and proper. Why was such an effort made to suppress knowledge of the conditions surrounding the election in the township of Sunfield on the 5th of November, 1912, unless the election was, as we claim, absolutely illegal, and contestee was desirous of suppressing that knowledge.

It is worthy of note that counsel for contestee are continually claiming that contestee received the most votes honestly cast and honestly counted, but in their wisdom as lawyers, able as they are, they have yet studiously refrained from claiming at any place in their brief that the votes questioned by us were legal votes. Nor is it claimed, so far as we can discover, that contestee was legally elected. And counsel for contestee practically admit throughout their brief that the claims of contestant are well founded, and their only answer is that if the seven precincts specifically set out in our brief are thrown out, likewise should a number of other precincts set up by contestee be thrown out for like reasons.

We will later in this brief analyze the claim of contestee that certain precincts should be thrown out, and show conclusively by authorities of Michigan and argument of counsel for contestee, that the same condition does not exist, nor do the same rules of law nor principles of logic apply. Contestee admits the strength of our position and the authorities and reasoning presented, and his defense can be summed in a sentence. What you say is true; the law you quote is correct; and it should be applied, but don't do it in this particular case. That this conclusion is warranted, we make the following quotations from the brief of contestee:

Contestee's brief, 6th paragraph, page 9:

"And we want to add a word more, that we believe as we shall have occasion to say later, that this Committee and this House are going to seat the man who has the most votes honestly cast and honestly counted, even though there be decisions and holdings which might justify the throwing out of certain of these precincts."

It will be noted that they do not claim that he had the most votes legally cast.

Brief of contestee, page 9, last paragraph.

"When their conscience is satisfied that contestee is not claiming a dishonest vote, and that contestant lacks 116 votes of having as many as the contestee, they will ignore and hold immaterial and not applicable strictly technical holdings as to mandatory and directory provisions of our election laws."

Again we call attention to the fact that they deliberately leave out the question of illegal votes.

Brief for contestee, page 10, 2nd paragraph:

"We do understand, however, that the constitution of the United States makes this House the ultimate sole judges of this election—from whose decision there is no appeal, whose finding is absolute and final; that they are not controlled by any decisions or any statutes anywhere, but if such decisions and statutes are considered, they are simply of an advisory character to this Committee and this House, and in no way absolutely binding."

It is a very unusual experience to find ourselves confronted with the admission that the statutes and decisions are conclusive, but accompanied with such an apparent appeal to this Committee and the House to disregard statutes, to disregard decisions of the Supreme Court of Michigan, and to disregard specific proceedings of the House just because it has the power to do it.

Brief of contestee, bottom of page 16-17:

"In other words, we believe that this Committee and House will exercise its prerogative in rendering a decision here which will do justice in this particular case irrespective of what the court found necessary to find the law to be in other cases in order that justice might be done in those cases."

Brief for contestee, top of page 20:

"As before stated, we will discuss in another portion of this brief the question as to whether this Committee and this House should be bound by Michigan decisions, even if it were found that this decision and others which have been cited by counsel would require the exclusion of this vote."

Again, Brief of contestee, page 20, 5th paragraph:

"Then if the House finds that nothing occurred there which could by any possibility be construed into fraud or intentional wrong, and which could not and did not change or influence the result, this House will not be bound by the decision in the case just cited for reasons already given."

Again, Brief of contestee, page 28, 3rd paragraph:

"But be that as it may, the record shows here that neither one of these parties was damaged or benefited by this irregularity, and we shall insist, as before stated, that even if it be held that the ballots of Winsor Township could be thrown out by reason of this decision in the 161 Mich., cited and quoted from by contestant in his brief (pages 16 and 17) yet that this harsh rule should not be applied by the Committee in the House in this case—it not appearing that any fraud or intentional wrong was done, and that it not appearing that any thing occurred there which in any manner changed the result of the election, or affected either candidate one way or the other."

And yet the statutes of Michigan, the Supreme Court of Michigan, and the continued practice and understanding in the State of Michigan, makes the votes last above referred to absolutely illegal and void.

We conclude the portion of our reply brief, covering the seven precincts which we so conclusively showed in our original brief were illegal and void, by stating that the above quotations from the brief of counsel for contestee admit the force of our position, admit the correctness of our statutes, of our Supreme Court decisions, and admit that in any tribunal in the United States these statutes, these Supreme Court decisions and the conclusions which we

reached would be binding. But because of the unusual and peculiar powers of the House, contestee asks the House to use its power and ignore law, and ignore statutes, and ignore supreme court decisions, and ignore continued and continuous practice, understanding and acceptance of such statutes.

We have shown to this Committee and the House that our contentions are strictly according to the statutes of the State of Michigan, the Supreme Court decisions of Michigan, the continued practice and acceptance by the people of Michigan of the provisions of these statutes and decisions. We refuse to believe that this Committee and the House will absolutely ignore all statutes, all supreme court decisions, all continued practice and acceptance of these laws and decisions, and by so doing, flagrantly abuse the power which is vested in them. We deny the contention of contestee that this Committee and the House "Are not controlled by any decision or any statutes anywhere," but we do insist as above, that the power of the House is always exercised legally and lawfully and justly in construing the law of the land and applying it, and that that power is not exercised in defeating and overriding the specific, statutory law of communities, as interpreted by the supreme judicial tribunal of that community, and as accepted and acquiesced in by the people of that community.

The above analysis of the attitude of contestee in his brief, confirms the general statement of conditions as set forth in our original statement of facts, wherein we claimed that the election machinery in the hands of the contestee was not fair, nor did it intend to be fair, to contestant, and the attitude taken in their brief that the contestee should be seated in violation of statutory law and supreme court decisions, is but another example of the same spirit which guided and controlled contestee and his friends in conducting the election and canvassing the votes in Eaton County, of which contestant has been complaining. The spirit is interwoven throughout the brief, that regardless of law and in violation of law, the contestee should be seated because he is a Republican. And the same spirit exhibited in this contest and in the entire election proceedings in Eaton county puts the contestee in the position of demanding everything for himself whether it be in violation of law or not.

PRECINCTS CLAIMED BY CONTESTEE.

A careful analysis of the sixteen precincts specifically mentioned by contestee shows the following conditions to exist:

The contestee claims in most of them that the entire vote of the precinct was illegal, because

- (a) Certain voters were assisted in voting and had their ballots marked without the voter being sworn, and
- (b) Because women were behind the railing.

We will discuss first subdivision.

- (b) Women were behind the railing.

This contention was absolutely unwarranted.

Sec. 23 of Act 190, Public Acts of 1891, as amended by

Act 8, Public Acts, Special Session 1912, (R. 212) expressly and specifically made the presence of these women legal. In Michigan, as in other states, the question of Women's Suffrage had become of immediate importance, and at the election on the 5th day of November, 1912, the right of suffrage for women was submitted to the electors, and this section was amended for the express purpose of permitting women to be present and watch the election proceedings, particularly upon the question they were interested in. The presence of women, therefore, was entirely legal, and the objection of contestee is untenable.

(a) Certain voters were assisted in voting and had their ballots marked without the voter being sworn.

Under this subdivision, contestee has objected to precincts where voters requested assistance in voting, and claims that the entire vote of the precinct should be thrown out. The position of contestee is absolutely incorrect, either in justice, in logic, or following the interpretation of the election laws of Michigan as construed by the Supreme Court of Michigan.

This precise question was raised in the case of

Attorney General vs. May, 99 Mich. 538 at p. 555,
in which the Supreme Court of Michigan stated:

"In the present case, the inspectors and other officers of the various districts are not charged with active frauds, but were marking ballots of those who claimed they could not read English, without their first having made oath as to that fact. This may have arisen from the interpretation of the statute now claimed by respondent's counsel; that is, that such provisions are not mandatory, but directory merely. And, again, it appears that proofs were obtainable and actually introduced as to the actual number of electors whose ballots were so marked. This would not, under the facts shown, necessarily taint the vote of the whole district, and it would not taint the whole ballot if the jury were able to determine the correct ballot, as, under such circumstances, it would not destroy the presumption of the correctness of the other ballots cast."

Having thus stated, in a general way, the rule, in the same case, pages 555-556, the Supreme Court follows by saying:

"We now come to the other portion of the charge, where, in substance, the jury were directed that they should take the illegal votes from the total vote proportionately, according to the entire vote returned for each candidate in that district. In this we think the court, under well-settled rules, was entirely correct. It is a fair way to arrive at results. The rule is based upon the proposition that the illegal votes have gone into the boxes without the fault of either candidate. If these illegal votes can be separated from the legal ones, so that the number is substantially ascertained, then the poll is too large by exactly that number, and they must be cast out. In casting them out, the rule laid down by the court below is sustained by McCrary, Elect. (3d ed.) Sec. 460, where it is said.

'Of course, in the application of this rule such illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each.'

In 6 Amer. & Eng. Enc. Law, p. 353, it is said:

'Where more ballots are found in the ballot box than there are names on the poll list, the statutes of many of the states require the officers of election to draw out enough ballots without seeing them, to make the number equal to that of the voters. And, where they have not done this, it is probable that no other mode would be preferable to that of deducting from each candidate a number of votes proportionate to his total vote compared with the aggregate vote of the precinct;' and the following cases are cited: Gibbons v. Sheppard, 2 Brewst. 128; Finley v. Walls, 4 Cong. Elect. Cas. 367; Platt v. Goode, Id. 650.

Our statute (section 174, How. Stat.) provides.

'If the ballots in the box shall be found to exceed in number the whole number of names of electors on the poll lists, they shall be replaced in the box, and one of the inspectors shall publicly draw out and destroy so many ballots therefrom, unopened, as shall be equal to such excess.'

Mr. Justice Cooley, in speaking of this provision of the statute in *People v. Cicotte*, 16 Mich. 323, says:

'As each ballot is usually one of a number designed to be allowed to particular candidates, and counted against others given to other candidates, the drawing may still work no injustice, since each candidate will probably lose by it a number proportioned to the relative number of ballots appearing for him in the box, and thus the relative proportions will be preserved.'

This rule, he says, 'is based upon the doctrine of probabilities.' While we have no statute directing the mode of apportionment laid down by the court below, yet the rule, we think, is one which does no injustice to either candidate, and in the end carries into effect, as nearly as may be, the will of the people as expressed at the polls."

Applying the above rule as laid down by the Supreme Court of Michigan to this case, we find that the number of votes cast in each precinct contested by the contestee voted by voters who were assisted in having their ballots marked, but were not sworn, should not be counted. It so happens that the record is specific as to the number of votes in each of those precincts, so that the rule to be followed in each of those precincts is that that number of illegal votes should be deducted proportionately from the vote for each candidate. That this is the correct rule is conclusively shown by the following quotation from brief of contestee, top paragraph, page 16:

"The case of *Attorney General v. May*, 99 Mich. 538, holds no more than that it is unlawful for an inspector of an election to assist in marking a ballot for any elector who claims to be unable to read English until such elector shall have first made oath to the fact. It further holds that this requirement is mandatory, and votes in violation thereof should not be counted. In our opinion there is no necessity in dwelling upon the law laid down in this case. It simply addresses its reasoning and argument to the proposition that where votes are illegally cast they should not be counted and should be withdrawn from the count if it can be ascertained how many were thus illegally cast."

As counsel for contestee and ourselves agree upon this proposition, it is especially significant to find contestee in his brief avoiding a tabulation of his votes and stating:

Brief of Contestee, page 39:

"In the matter of the swearing of illiterate voters who requested assistance, the showing made by contestee is far in excess and more serious than that shown by contestant, though as to the actual number shown by each we have not now at hand a mathematical compilation."

We add here a compilation of the total number of voters assisted in any precinct contested by contestee, giving in each precinct the maximum number as sworn to by any witness in the record, and we shall be fair enough to add a few precincts where this condition existed which contestee evidently overlooked in the preparation of his brief.

Maximum number of voters assisted but not sworn:

(We include herein only the precincts carried by the contestant and of which the contestee complains).

7th Precinct, City of Kalamazoo, Kalamazoo County.....	3
Texas Township, Kalamazoo County.....	2
3rd Precinct, City of Kalamazoo, Kalamazoo County.....	7
4th Precinct, City of Kalamazoo, Kalamazoo County.....	5
10th Precinct, City of Kalamazoo, County of Kalamazoo.....	5
12th Precinct, City of Kalamazoo, County of Kalamazoo.....	4

13th Precinct, City of Kalamazoo, County of Kalamazoo.....	5
14th Precinct, City of Kalamazoo, County of Kalamazoo.....	2
Redding, Hillsdale County	3
1st Ward, City of Albion, Calhoun County.....	2
2nd Ward, City of Albion, Calhoun County.....	4

Total42

We have not included in the above any of the precincts carried by contestant in which any voters were assisted but not sworn, because in applying the rule and deducting proportionately the votes, the application of the rule would only make the result more favorable to contestant, and we do not wish to burden this Committee or the House with unnecessary figures.

We then proceed to deduct the whole number of the above votes from the vote of contestant, although the rule only requires them to be deducted proportionately in each precinct.

The final figures then stand:

Total corrected count in original brief, Carney.....	13,961
Deduct illegal votes as above stated.....	42

Total corrected vote for contestant.....	13,919
Vote for contestee	13,690

Plurality for contestant, Carney..... 229

This is a more favorable tabulation of votes than the contestee is entitled to under his interpretation of the law as set forth in his brief and quoted above.

In conclusion, we call attention to our original brief, in which we cover specifically seven precincts of this congressional district, in which the votes were absolutely illegal according to the election statutes of Michigan and according to the specific decisions of the Supreme Court of Michigan upon identical conditions. The answer of contestee is to admit that according to the statutes of Michigan and the Supreme Court decisions, the votes of these precincts were illegal, but that the House should exercise its prerogative regardless of those statutes, regardless of the Supreme Court decisions, and seat contestee, notwithstanding the fact that contestant was legally elected. This is conceded to be the position of contestee in his brief, on page 49, where he says that 'it may be said by contestant that we are asking the House and this Committee to overrule the law of Michigan. Our contention should not be so construed. We simply say that under the constitution the House is not bound to be guided by precedents of any character, even its own.'

We have taken up the specific precincts presented by contestee, and we have shown that upon the only ground that he bases his claim that the whole district should be thrown out, the Supreme Court of Michigan has adopted a positive and fixed rule, which is reasonable, just and fair, and applying that rule, we have granted to the contestee every possible advantage by deducting all of the illegal votes in these precincts from the contestant's vote, and yet contestant received a plurality of 229 from the legal votes cast in that district.

We submit, therefore, that the contestee, John M. C. Smih, should not be seated, and that contestant, Claude S. Carney, should be declared to have received a plurality of the legal votes cast in the Third Congressional District of Michigan on the election of November 5th, 1912, and that he be seated.

CLAUDE S. CARNEY,
Contestant in Pro Per.
EDMUND C. SHIELDS,
JOHN W. ADAMS,
Attorneys.

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STATEMENT OF PARTIES AND ATTORNEYS

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IN CASE OF

CLAUDE S. CARNEY

v.

JOHN M. C. SMITH

FROM THE

**THIRD DISTRICT OF THE STATE
OF MICHIGAN**

Referred to Election Committee No. 1

U.S. District Court, Eastern District of Michigan
= election no.



COMMITTEE ON ELECTIONS NO. 1.

SIXTY-THIRD CONGRESS.

[Committee room, room 297, House Office Building. Telephone 502. Meets on call.]

J. D. POST, Ohio, *Chairman*.

HUBERT D. STEPHENS, Mississippi.

WALTER ELDER, Louisiana.

CHARLES R. CRISP, Georgia.

BURTON L. FRENCH, Idaho.

GEORGE McCLELLAN, New York.

JAMES A. FREAR, Wisconsin.

CHARLES M. BORCHERS, Illinois.

WALTER M. CHANDLER, New York.

FRANK MILLER, *Clerk*.

CONTESTED ELECTION CASE OF CLAUDE S. CARNEY v. JOHN M. C. SMITH.

COMMITTEE ON ELECTIONS No. 1,
HOUSE OF REPRESENTATIVES,
Friday, December 5, 1913.

The committee met at 10 o'clock a. m.

Present: Representatives Post (chairman), Stephens, Borchers, Elder, French, and Frear.

Present also: Claude S. Carney, contestant, Edmund C. Shields, his attorney, and John M. C. Smith, contestee.

The CHAIRMAN. Mr. Shields, you may proceed with your argument.

Mr. SHIELDS. That condition, as I stated, became sufficient and so impressive to a Democratic challenger that he objected there that day, and the only answer he could get was, "What are you going to do about it?" That is typical of the condition existing; that showed the sentiment of the people there and the attitude toward the election and toward the board and toward the contestant growing out of politics entirely; and that situation has been covered in the case of Attorney General v. McQuade, that the soliciting of votes in that way constitute actual fraud.

The CHAIRMAN. Give us the whole citation.

Mr. SHIELDS. Ninety-fourth Michigan, 439, Attorney General v. McQuade.

Mr. FREAR. Those are all referred to in the brief?

Mr. SHIELDS. Those are all referred to in the brief. I will say to the gentlemen frankly that they can save some trouble if they will carefully read the brief.

Mr. FRENCH. Do you mean there are other citations you have not referred to than those other than in your brief? What do you mean, that there are more cases holding the same thing?

Mr. SHIELDS. I do not mean more cases.

Mr. FRENCH. You refer to the case where this inspector replied and protested in that way, that one of the judges said, "What are you going to do about it," and you said that is typical.

Mr. SHIELDS. Of that precinct, not of other precincts.

Mr. FRENCH. Do you mean that in that precinct there is a multitude of just such instances as that?

Mr. SHIELDS. Not in the general way asked and answered, but a great number, and from the record it can not be determined the number of votes that were solicited.

Mr. ELDER. Does not this challenger state in his testimony one instance in which he heard the question asked?

Mr. SHIELDS. The testimony shows in the record, if you will take what each man contested about.

Mr. FRENCH. Does not this man who raised this question admit in his first testimony that he testified as to only one case?

Mr. SHIELDS. That is not my recollection of it.

Mr. FRENCH. I think you will find it is so. You said it was typical.

Mr. SHIELDS. A multitude of such instances existed in that precinct of men being solicited. There is not a witness but what told about some incident of solicitation of votes in that precinct.

The CHAIRMAN. Did that continue all day?

Mr. SHIELDS. The record does not show it was all day, but at various periods during the day.

Mr. CARNEY. Excuse me for answering your question. Mr. Mosier made the remark on cross-examination that he meant one inspector; that every voter that went into the booth had his votes solicited.

Mr. FREAR. Whereabouts in the record is that?

Mr. SHIELDS. You will find that in the record on page 48. In the brief for contestee I am criticized because I am unfortunate enough, perhaps, to have nerve in Michigan to be chairman of the State Democratic committee. That requires some little nerve in Michigan, and I am criticized because I am chairman and because Mr.

Carney has seen fit to retain me to assist him in this case; and not the insinuation only, but direct claim is made that I have been gotten into this case by Mr. Carney because of my being State chairman and because of some possible imaginary political influence that might follow the State chairman being in this case. I want to be very frank to this committee and state to you that when this contest started, Mr. Carney, whether fortunately or unfortunately, engaged Judge Adams, of his home town, as one of his attorneys and myself as another attorney. After carefully going over the petition and the preparation of this case, it seemed to me arrogant nonsense that Mr. Carney, Judge Adams, one of the leading and biggest attorneys of Kalamazoo, and myself, perhaps a very small attorney, should all be present at the taking of testimony; that it was needless expense; and therefore we divided the work and arranged that Mr. Carney and Judge Adams should do the work of taking the testimony and that I should prepare the briefs, which I have done, every one of them, and if that is a crime upon which the criticism may be justly directed, I am guilty.

Mr. FREAR. Right in that connection, do you not suppose some one else has had this impression, from these telegrams which I want to read?

Mr. SHIELDS. I would like to hear them.

Mr. FREAR. I will read the first telegram. They have been handed here for the use of the committee, I presume. They are addressed to Hon. J. D. Post, chairman [reading]:

ALBION, MICH., *December 4, 1913.*

Hon. J. D. Post, M. C.,
Washington, D. C.:

Believing that Claude Carney was legally elected to Congress from this district and that he was deprived of his seat by the fraudulent acts of disloyal Democrats, I urge that his contest be given fair trial and decided on its merits.

D. M. MCAULIFFE,
Chairman Democratic City Committee.

Mr. SHIELDS. I never heard of it.

Mr. FREAR. The next telegram, addressed to the chairman, is from Charlotte, Mich., and is to this effect [reading]:

CHARLOTTE, MICHIGAN, *December 4, 1913.*

Hon. J. D. Post, M. C.,
Washington, D. C.:

With full knowledge of the political situation in the third district of Michigan and that Mr. Carney is in the right, we urge that in justice to Democracy that he be seated as Congressman of the third district.

R. L. SOWERS.
R. S. SPENCER.

Mr. FREAR. I take it for granted that you know nothing about that.

Mr. SHIELDS. In reference to the telegrams?

Mr. FREAR. The telegram just handed to me.

Mr. SHIELDS. I certainly do not.

Mr. FREAR. I take it for granted you knew nothing about it.

Mr. SHIELDS. Another thing we want to cover: Mr. Carney is criticized for going outside of his district, because I happen to live outside of the district, when contestee's own brief is signed by a Republican of the State of Michigan who does not live in his district.

Mr. FRENCH. I think you are giving more attention to that than the committee would ask of you, because I do not care if the majority of the members are Democrats, I am satisfied it is absolutely determined to do the fair and square thing, and I do not think there is any question in the world about it.

Mr. FREAR. I wish to read one more telegram into record. This is dated Eaton Rapids, Mich., December 4, 1913. [reading]:

EATON RAPIDS, MICH., *December 4, 1913.*

Hon. J. D. Post,
Member of Congress, Washington, D. C.:

We firmly believe the merits of the case are with Mr. Carney in his contest, and that in justice to him and his constituents he should be seated as a Member of Congress from the third Michigan district.

JOHN T. HALL.
J. B. HENDEE.
H. M. HALL.

Mr. FREAR. Who are these gentlemen?

Mr. SHIELDS. They are all men that live in Eaton County, and they are undoubtedly familiar with the situation as it was there on the 5th of November last, and want to be sure that it is carefully gone into.

Mr. FREAR. Why would these gentlemen be anxious about that? Here are these telegrams addressed to the committee. Why would these men think these telegrams would have an influence with this committee, when the parties at interest are expected to appear here in person, with their counsel, and present the evidence?

Mr. SHIELDS. I have not any explanation.

Mr. FREAR. We have had a previous experience of this kind, and we are getting very tired of that kind of pressure attempted to be brought to bear from the outside. I think we are all inclined to decide everything fairly.

Mr. SHIELDS. As far as I am concerned, I used all my energy trying to get here. I got a telegram late night before last, and it was necessary for me to work all night and leave at 7 o'clock in the morning.

Mr. FREAR. I am free to say that I do not believe the committee should allow such influence to be exerted here.

The CHAIRMAN. On the contrary, it might militate against your side, Mr. Shields.

Mr. FRENCH. I do not think it would militate against their side.

Mr. SHIELDS. The telegrams were sent without our consent and connivance, and I hope you gentlemen will get well enough acquainted with me as this case proceeds to know that I mean what I say.

The CHAIRMAN. We propose to settle this case upon its merits.

Mr. SHIELDS. That is just exactly all we are asking from this committee.

The CHAIRMAN. All the petitions and letters they write will not influence a single member of this committee.

Mr. FREAR. There are three other telegrams that might as well go into the record along with those I read.

(The telegrams submitted by Mr. Frear are as follows:)

MARSHALL, MICH., December 4, 1913.

Hon. J. D. PORTER, *Member of Congress,*
Washington, D. C.:

Matter Conway Smith contest, I voice the strong sentiment of the fair-minded voters of Calhoun County that justice demands that Claude S. Carney be seated. There is absolutely no question that irregular work was done by several different canvassing boards in this district.

J. C. BECKWITH,
Chairman Democratic County Committee.

BATTLE CREEK, MICH., December 4, 1913.

J. D. POST, *Washington, D. C.:*

The seating of Claude S. Carney will give us clean politics and hereafter honest returns. I feel that his election was the people's choice and his defeat the delight of disloyal Democrats.

FRANK FENN,
Chairman Calhoun County Democratic Club.

EATON RAPIDS, MICH., December 4, 1913.

Hon. J. D. POST, M. C.
Washington, D. C.:

We believe Mr. Carney is justified in contesting the seat of J. M. C. Smith in Congress and that justice demands Carney be seated as a Member from the third Michigan district.

E. W. GALLERY,
Township Treasurer.
FRED BOSTEDOR,
L. J. WINN,
Supervisor.

Mr. SHIELDS. That is a general condition, as I have stated before. I am not going to take the time of the committee to read a lot of the record or to state all of the conditions which exist in the different places. I think that the value of an oral argument may be to present to you the conclusions and the conditions as we see them, and we have cited in our briefs the places in the record where every statement can be substantiated.

In regard to the question that was asked as to whether it applied to only one voter. There is all kinds of proof, and any number of witnesses were presented, and I suppose the strength of the case depends upon the straightforwardness and forcefulness of the story and how it is told, and the scenery rather than the volume or the number of witnesses; but I want to cover the gentleman's question here by quoting from my brief on page 4, which quotes from the record on page 45, of the testimony of Dunning [reading]:

"We had some trouble about it. I told Mr. Dunning the soliciting of votes should be stopped. He said 'What are you going to do about it?' (R., 48.) I heard the same suggestions made to all voters who asked for instructions. (R., 47.) I should say seven or eight asked for instructions. (R., 46.) Usually Dowdigan and Dunning went in together. (R., 44.) I was not there all the time. I did not hear any suggestions made or any candidate other than for John M. C. Smith. (R., 45.)"

Mr. SHIELDS. I will answer specifically the question as to whether more than one man was solicited.

The CHAIRMAN. He says there that seven or eight voters were instructed and solicited, and under the decision in this case of the Attorney General v. McQuade do you claim that the solicitation of seven or eight votes would invalidate those seven or eight votes or invalidate the vote of the whole precinct?

Mr. SHIELDS. Yes, sir; because that is actual fraud under the Michigan law. If they had only been instructed improperly in the voting, if their ballots had been marked improperly, then that is not actual fraud, and if it can be determined under the decisions surely it can be deducted proportionately from the vote; but under the case of Attorney General v. McQuade there were 13 of those kinds of solicitations, and the Supreme Court threw out the entire precinct. We contend that the purpose of the law, if you please, is to protect the honesty and integrity of the ballot and the precinct and that it is better and safer to throw out the entire number than to palliate it by permitting fraud to go to a portion of it.

Mr. FREAR. In that Michigan case, Mr. Shields, you say that that was decided so by the court. In this case, as I take it, there is one witness who says there was seven or eight voters instructed; that is the only testimony, as I understand, on that subject. What was the testimony offered in the Michigan case that was decided to show that unfair influence had been attempted in the instruction of voters?

Mr. SHIELDS. That case, Mr. Frear, went to the Supreme Court not upon trial; it went there over a question of pleading.

Mr. FREAR. The facts were not shown?

Mr. SHIELDS. The facts were not shown, except as related in the petition, and the Supreme Court in the petition alleged there were 13 votes illegally solicited. In the decision the court held that if those facts were proven that whole precinct must be thrown out.

Mr. FRENCH. Then, further, Mr. Shields, I think, as I recall it from just the one reading, that these two men whom it is alleged assisted the one who asked for assistance testified that only in that one case does that obtain, as that one witness has testified, and in that one case the witness stated that the reason for it was that the voter was an old man and seemed to be fumbling on a name and could not get the name, and this man prompted him, and he said, "Was it J. M. C.?" The old man replied, "Yes; that is the man."

Mr. FREAR. As I remember the record it says, "What do you say as to Smith?"

Mr. STEPHENS. I think it was "James Smith."

Mr. FRENCH. And he was a neighbor of Smith, an old gentleman, possibly trying to think of the name, and under the circumstances maybe could not think of his own name, and this man suggested it. Is not that what the testimony showed?

Mr. SHIELDS. That is what some witnesses swore to; that is what the men who were doing this testified, and I never knew of a man doing an improper thing admitting anything more than he had actually to do.

The CHAIRMAN. Did you take the testimony of any witnesses who claimed to be solicited there, any voters?

Mr. CARNEY. No; we could not get the names of any; nobody seemed to know.

Mr. SHIELDS. The theory, it would seem to me, would hold good if it was only one vote, and they admit that.

Mr. FREAR. Do they admit that?

Mr. SHIELDS. Yes.

Mr. FRENCH. He does not admit soliciting; he admits raising that question when the man was trying to think of the name, and the man indicated to one other person what he wanted to vote for and was stumbling in his mind; that is as I recall it.

Mr. SHIELDS. Of course, we would merely be quarreling over the results.

Mr. FREAR. That is the language.

Mr. SHIELDS. Would that one condition of that one vote prompt any reasonable man on earth to protest about a condition existing so as to cause the rejoinder, "What are you going to do about it?" and nobody denies that.

Mr. FREAR. We were just inquiring as to the testimony rather than in an argumentative way. That is Mr. French's idea and also that of Mr. Elder. It does not bother you to have us inquire at this time, I trust, because in this way we shorten things.

Mr. SHIELDS. Not a particle, and I would expect you to get at the facts and get at the merits just as well as you can. I perhaps may have to apologize, because it has been three or four months since I compiled that brief, and I had to refresh my memory on the train yesterday, and it will help me if you will bring in anything that you desire to discuss, because I do not want to say anything that is not absolutely correct. I want to be fair before this committee, and I want you to understand my attitude. That is the condition, and that is the theory as to that precinct, upon which we claim that it is illegal.

Mr. FREAR. That is the third ward of Charlotte?

Mr. SHIELDS. That is the third ward of Charlotte.

There are the citations; those are the facts. There are more than perhaps I have mentioned, but it is the condition that existed there. It is illegal, as it is absolutely prohibited by the election statute, and it has been determined as absolutely illegal by the Michigan Supreme Court, and that kind of a precinct should be thrown out. So much for that precinct.

Now let us consider Sunfield Township, in Eaton County. In the township of Sunfield the law provides, as I have said, and as I have quoted in my brief, that we are just what was stated; and I might state first that there is a provision in our election law that provides that a ballot shall not be handed out by any but a member of the board; that it shall not be received by any but a member of a board; that it shall not be counted by any but a member of the board; and the law further provides who shall constitute the board. In the township of Sunfield they called in a man by the name of Sayer. They appointed him instructor. He was an absolute interloper into the election machinery of Michigan.

The CHAIRMAN. What was his qualification?

Mr. CARNEY. The record shows him to be a Democrat and that is what he testified to.

Mr. SHIELDS. He is a Democrat, and a man who had no standing officially at that election.

Mr. FREAR. Why was he called in, do you suppose?

Mr. SHIELDS. I rather think that perhaps in some of those communities they had been in the habit of doing it.

Mr. FREAR. For the purpose of instruction—throwing light on the voting?

Mr. SHIELDS. I do not think it is that.

Mr. FREAR. Without legal effect?

Mr. SHIELDS. It is because they used that method there of carrying on the election. My impression is, and I do not state this to be correct, there was an election law back some years ago that made that provision to have him selected and sworn, and they appointed this man, and every ballot that was got out at that election was got out by him. That was a distinct violation of the expressed provisions of our election law, and that condition—identically the same condition—passed on by our supreme court in the case of *McCall v. Kirby*—120 Michigan. I think it is—which is absolutely on all fours, holding that every vote in that precinct was absolutely illegal and void.

The CHAIRMAN. Do you mean to say that your supreme court has held that where a person not authorized by the statute does nothing more than sit and hand out a ballot to a voter, that you disfranchise the voter on that account?

Mr. SHIELDS. Absolutely. The statute provides, and I may read from the brief, page 8.

Mr. FREAR. Page 9 is the particular extract.

Mr. SHIELDS. Yes; I will read the statute, compiled laws of Michigan, section 3640.

The CHAIRMAN. Is that all he did, hand out the ballots?

Mr. SHIELDS. He went into the polls.

The arrangement of the booths in this voting precinct was such that the board sat at a table on one side of the room, and on the east side of the booths. That Sayer, as "instructor," was given ballots by the board and he took the position on the west side of the booths and outside of each and every member of the board, and handed out the ballots to the voters as they came in. The board could not see what the instructor was doing and the instructor could not see what the board was doing, and the instructor handed the ballots out on that side, and he admits in one case he went into the booth. I want to be correct about this, because I hope that if I misstate it I will be corrected. That he talked with others outside, and other testimony shows that

they heard the talking; that every one of those ballots were on that side during the entire time and were passed to the individuals as they came in, and then out past the board, handing them in as they went out. That was the identical condition in the Kirby case.

Mr. FREAR. Two of the three inspectors were Democrats and this man Sayer is a Democrat, so there is no charge of fraud.

Mr. SHIELDS. It was a fraudulent election in that it was absolutely illegal.

The CHAIRMAN. Do you claim, Mr. Shields, that the result would have been any different if this man would not have been there?

Mr. SHIELDS. That is not for me to claim. We could not go back and count the ballots that are absolutely illegal.

The CHAIRMAN. That would lead us to a difference of opinion, whether or not we are bound by the Supreme Court of Michigan; that may be so. This is a question that will come up later on.

Mr. SHIELDS. I realize that.

The CHAIRMAN. You made claim that the result of this precinct would have been different if this man had not been there at all?

Mr. SHIELDS. That is a question I can not answer, Mr. Chairman. I do not know. Nobody can answer that specifically. The procedure was identically the same that would have been followed if the election had been "fixed." The methods and procedure were exactly the same as if it were attempted to accomplish illegal practice.

Mr. FREAR. Now, if you can, give us the law.

Mr. SHIELDS. I can.

The CHAIRMAN. I want to ask you another question. This man Sayer put his initial on the ballot?

Mr. SHIELDS. No; the initial was put on by another member of the board.

Mr. FRENCH. That is required to be done, is it not?

Mr. SHIELDS. Yes, sir.

The CHAIRMAN. When did he put them on? Sayer furnished the voter with the ballot?

Mr. SHIELDS. The ballots are first in the possession of the board, and then one member marks his initials under the perforated line on 50 of those ballots, and then they are turned over to the man who delivers them to the voter.

Mr. FRENCH. That was Sayer?

Mr. SHIELDS. As I understand it.

The CHAIRMAN. The ballots were in book form, bound?

Mr. SHIELDS. Not bound; individual ballots, so many sheets of paper. Each ballot is a separate one by itself, and they merely come in a stack.

The CHAIRMAN. In Ohio we have ballots perforated and bound.

Mr. SHIELDS. Ours are not bound; they are perforated across the corner.

The CHAIRMAN. Your ballots are loose?

Mr. SHIELDS. Yes, sir.

The CHAIRMAN. Are these ballots permitted to be distributed among the public generally?

Mr. SHIELDS. No, sir.

Mr. FREAR. Do you have one Australian ballot on which all the names appear, so that the ballot handed out contained all the ticket?

Mr. SHIELDS. Yes, sir.

I am going to read—it is a very short decision, and I take it for granted that the gentlemen of the committee have sufficient legislative experience to know that the statement of facts is almost identical with the one here, and I am not questioned when I state this case is on all fours. As long as the question has been asked, I will say that our supreme court has always been entirely Republican, with the exception of one or two members that happened to get on there years ago. Just then it was Republican [reading]:

"Grant, C. J. (after stating the facts). Manifestly, the election law was wholly ignored in the appointment of Mr. Kerr, in intrusting the ballots to him, and permitting him to have free access to the electors after they had passed into the voting precinct, and into the booths themselves. It is urged that the inspectors of election acted in good faith, and supposed they had the right to appoint a man as an instructor of election. It is difficult to understand how intelligent men should reach this conclusion. The law makes no such provision, but makes it the clear duty of one inspector to keep possession of the ballots, and to hand them to the voters, after another inspector has opened the package, and still another has put his initials upon them. It is due to the members of the election board to say that there is no evidence that they acted from corrupt motives. If, however, this conduct can be sustained, and the plain provisions of the law ignored, rascals can very readily make the same plea, and it

would be difficult to expose their rascality. These provisions of the law have been held mandatory. (Attorney General v. McQuade, 94 Mich., 439; Attorney General v. Stillson, 108 Mich., 419.) By a reference to the latter case, on page 421, it will appear that the interpreter, an officer provided by the act, was stationed very near to, and in plain sight of, the inspectors, and talked with the voters, as they came in, in a foreign language. It does not appear that there was more evidence of fraud in that case than in this. That case differs from this only in two particulars. First, that the conversation between the interpreter and the voters was not in the English language, as it was in this; and, second, that the "instructor" as he was called in this case, had a better opportunity to secretly influence electors than did the interpreter in that. If these provisions are mandatory—and we have so held—they can not be evaded by showing that the parties acted in good faith and that voters were not influenced. The law was intended to prevent just such transactions and chances to influence voters, and courts can not fritter them away by permitting jurors to find that there was no fraud and that voters were not unduly influenced.

"The judgment must be set aside, and one entered for the relator.

"The other justices concurred."

Mr. FREAR. Here is a board that has looked at the true reasoning of the supreme court, if here is a board, a majority of them are Democrats——

Mr. CARNEY. Mr. Frear, may I correct that statement? You made it once before and it has also been made in the brief.

Mr. FREAR. Yes.

Mr. CARNEY. The board, as a matter of fact, was made up of four members, two of which were Democrats and two Republicans. I think that was stated in error.

Mr. FREAR. Conceding that is a fact, and they should select an inspector or instructor, and he a Democrat, would it not be possible if there was a disposition to commit fraud, that in any particular election they could make such an appointment? That is, if the purpose was throwing out all those votes? Would it not be possible in this ward if it was the disposition of that board and this instructor to have those votes thrown out, to have an appointment made in that way so as to prevent the opposite candidate, who would be a Republican or Democrat, as the case might be, from having the votes cast for him? That charge can not be put in this case, because there was no disposition, so far as the political character of the board and the character of the instructor is concerned. That charge could not be here, because, of course, there is no claim that there is any fraud exercised in this case.

Mr. SHIELDS. We do not claim that.

Mr. FREAR. The point made by the court was that the instructor sometimes interpreted or presented argument. There is no such claim in this case that it was done?

Mr. SHIELDS. Oh, yes; there is some testimony that he did talk to at least one, if I recall the record correctly.

Mr. FREAR. In favor of one of the other candidates?

Mr. SHIELDS. I do not think the record shows what the conversation was about, does it, Mr. Carney?

Mr. CARNEY. No.

Mr. BORCHERS. It hangs not on what the political complexion of the board was or who the board were for, because the man might be a Democrat and be working tooth and toenails for a Republican, and the board might be Republican and doing the same thing for a Democrat; and the political color of the board has not a thing to do with it. The question is as to who these fellows were for and who they were against, with me, and I would like to know something about that.

Mr. FREAR. I was taking it up with reference to this supreme court decision.

Mr. FRENCH. I think in connection with the argument that the supreme court uses or its reason, suggests this, and I think possibly it was in the mind of Mr. Frear. Suppose now, for instance, that this particular precinct were known to be an overwhelmingly strong Republican precinct, say by 100 majority, by following out that particular theory of the Supreme Court of Michigan would it not be possible for a frame up in the hands of unscrupulous persons to place a person in that position illegally, and then after the election should have been held to turn around and say, "Here is an incidence where 100 votes now ought to be thrown out, or rather the entire vote of the precinct, 100 majority for the Republicans, simply because they did not follow the law."

Mr. SHIELDS. Of course, those things are possible, Mr. French, but in order to make it possible you should have to go back and find that in your illustration a community that has 100 Republican majority, and therefore had township officials that were entirely Republican, and that for some reason in their own ranks have desired their entire township board to commit an illegal act and a criminal act, if you please, for

the purpose of bringing about a result; and if under your illustration they wanted to do it that would not be impossible in Michigan.

Mr. FRENCH. One or two would be sufficient to do this; the other could be misinformed and acquiesce in something that, as a matter of fact, was illegal. The fact of the business is in bringing this up I have in mind that which I was going to suggest a little later on, but the chairman has suggested he will call it up later on, that is, the view that the Congress ought to take of a case, notwithstanding the decisions of the Michigan courts.

Mr. SHIELDS. That is a point I will argue later. I would just as leave argue it now or later.

Mr. FRENCH. I think we should get through with the specifications, and then take up that proposition. But the point then, further, we would like to know is whether or not in this specific case there was fraud connected with the designation of this man Sayer; whether there was anything of fraud in connection with his conduct in soliciting votes or Smith, or anything of fraud in connection with that particular precinct, because we do not know which way this committee will be bound to consider it, and we want to view all of those questions.

Mr. ELDER. It is really a technical objection, following out that decision.

Mr. SHIELDS. It is technical, my friend, in this way, that if you had lived up in Michigan and been up against conditions, as I have, in election-contested case, a county in which a Democrat goes into a community and files his petition for a recount, and the first count of the first precinct or township in that county shows a difference of 500 votes in his favor and the next morning when you go back the ballot box has been knocked open, and the fact they have been opened bars their being counted.

Mr. FREAR. That is hardly a fair argument to present to a committee that has not the facts.

Mr. SHIELDS. We are down here to try to give you the facts, the condition and atmosphere and environment.

Mr. FREAR. Do you not see where that would necessarily lead? We have to inquire into elements of that case to see whether your statement is justified. We have just finished another matter of equal importance and where there is as much testimony, and our idea is to confine it strictly to the merits of the case. You are very kind in answering matters fairly.

Mr. SHIELDS. There is a condition that exists here in this particular district, and that is all we can ask you gentlemen to consider.

Our attitude on this matter is that under the election laws of Michigan and under the decision of the Supreme Court of Michigan, point blank, that that entire vote in that precinct was absolutely illegal and void; that it is not necessary for us to go back and take up any specific instances and show whether there was any greater fraud than that; that that in itself is the biggest possible fraud.

Mr. FREAR. Was there any specific fraud excepting the fact that this man was in a position to say something?

Mr. SHIELDS. And the record shows he did talk; that is all.

Mr. FREAR. Was this man talking in favor of one candidate or another?

Mr. SHIELDS. The record does not show that, and I do not know.

Mr. ELDER. The constructive fraud would be in that it is illegal?

Mr. SHIELDS. Yes. Are there any further questions on these conditions in Sunfield?

The CHAIRMAN. Have you in your evidence undertook to segregate how many people he had instructed?

Mr. SHIELDS. I do not think so, Mr. Chairman—in the evidence undertook to segregate the number that he had talked to in Sunfield.

Mr. CARNEY. The whole evidence on that question was on cross-examination of Mr. Sayer, who appeared—if you will permit me to state that. I do not believe Mr. Smith was present at that particular hearing. This man Sayer was in Florida at the time this original case was taken, and he was brought in by Mr. Smith. On cross-examination he testified that one of the voters, I think, marked his ballot outside of the booth and on his table. Whether he talked with him or what he talked about does not appear.

Mr. FREAR. Do you know the page of the record?

Mr. CARNEY. Yes. You will pardon me if I give you some of these facts. Some of them may have escaped Mr. Shields's attention. There are about 500 pages of the typewritten stuff, and it would be impossible for him to be familiar with it all.

Mr. SHIELDS. There is no way of getting at it.

Mr. CARNEY. I will give you that from the brief. It is quoted verbatim, record 437 [reading]:

"I remember of two men calling me up in the booth and asking me some questions about the ballots, about how to mark them, and I told them how to mark them. I saw one man mark his ballot outside before he went into the booth. He marked it at my table there." (R. 437.)

Mr. SHIELDS. Just previously in the brief he is quoted as saying [reading]:

"The voting booths were along here, and I was on one side and the board was on the other. I delivered a ballot to each voter that day. I did not go into the booth with any voter, but I went to the door to show them. I remained at the polls from early in the morning until 12 o'clock and until 5 o'clock. I delivered each ballot that was voted." (R. 433-434.)

It is very peculiar, if you please. With one exception, these things all happened there in Eaton County. There was one case down on Hillsdale in which three cripples were brought downstairs, and the board went down and took their ballot and went back and deposited it; but these conditions all arose in this county where vote, perhaps a great deal of it, could be attributed to the fact of Smith's home county and personal acquaintance.

Mr. FREAR. Here is what he testified to. The question was:

"Q. How many different men, would you say, you did that with that day?—A. I think two.

"Q. There might have been more?—A. I don't think of any but two."

Mr. SHIELDS. The principal strength of the proposition, gentlemen, is that the opportunity which the supreme court says is there, and absolutely declares, as I have stated—

Mr. ELDER. There is no necessity of showing actual fraud.

Mr. SHIELDS. Yes; the provision is mandatory. There is no use going into general discussion. The fact that you are here in Congress shows that you are men that have been through situations in which you appreciate the fact that the only protection that a candidate has is in the law, and if he can not get it from there he can not get it anywhere else. Some of you may have come from States where they were overwhelmingly Democratic and some of you may be Democrats who come from overwhelmingly Republican States, and if you have you know the only possible protection a candidate has is to have the law as it exists enforced fairly and construed as it stands—the only possible protection you have.

In the case in which this came up, *McCall v. Kirby*, the vote was returned in favor of Kirby as Republican. McCall asked for a recounting as a Democrat, and the circuit court duly threw aside his contention and held with the Republican that that was not a fraud. Now, a Republican supreme court handed down this decision I have just read you. It is in those conditions, if you please, that you have got to look for your protection. You have got to look to the law. It is somewhat in Michigan as it undoubtedly is in other States. It has been a long and peculiar strife, but when the condition is such that a Republican supreme court will unanimously take the position they did in that decision and hold that that law should be construed as they have construed it, it seems to me that their legal conclusion, when they had the same opportunity to use discretion that this committee in this House has, in spite of every possible private or personal or political tendency they might have, would be sufficient evidence for you to show that that is a most valid law and interpretation in Michigan, if you are going to have election laws there that represent the wishes of the people in any way. It is the only protection they have and sometimes that is not very much.

I am not speaking for the Republican Members. I want to tell you that conditions make it pretty difficult for the minority party which we have there, and if they can not have the protection of the laws and not have the law mean just what it says, it is a peculiar situation.

I will now address myself to the second ward in Charlotte, if there are no further questions on Sunfield.

That is covered again, as I have stated, very fully in our briefs, and in that condition it is somewhat similar to the third ward of Charlotte, but in a different way.

The CHAIRMAN. What page in your brief?

Mr. SHIELDS. Page 10 of my brief.

In the second ward of Charlotte one of the characters in behalf of Mr. Smith was one John C. Nichols. Nichols was candidate for circuit court commissioner. The election law of Michigan specifically provides, as quoted in the brief, that no candidate for any office shall be a member of the board. He testified in the taking of the testimony that he was a lawyer. He was a candidate for circuit court commissioner and he knew on election day that he had no right to participate in the working of that board. With that knowledge, with that law, yet he goes in and takes the place of a man and takes ballots, under the condition, if you please, where in taking the ballots on one side of the booths and the board on the other that he could not be in the presence of

the board all the time. He even at sometimes handed a ballot to a voter on that side and went over on the opposite side and put it in the box.

Mr. CARNEY. That is not correct.

Mr. SHIELDS. Mr. Carney, gentlemen, says that I am in error.

Mr. FREAR. I was trying to get the location of the booths and the ballot box.

Mr. CARNEY. I can give you that. The situation of the booths was very much the same as at Sunfield. It was impossible for the other member of the board to see the member that was depositing the ballot. Mr. Nichols during the time—that is in the dispute, but he testified to a certain time, and our testimony shows that it was an hour and a half—he stayed on the side of the booths where the ballot box was, away from and out of sight of the other members of the board. The reference Mr. Shields makes was to another instance which happened in the particular precinct. There is no point like that.

Mr. FREAR. He handled the ballots after they were marked by the voter?

Mr. CARNEY. Yes, sir; and put them in the box.

Mr. SHIELDS. I am going to digress for a moment to refer to the record and show the facts, because it strikes me, gentlemen, that the important feature of this contest is for you men to get a conception of the situation, the atmosphere—call it political or otherwise, if you please—in Michigan and in this particular district, so that you can understand just exactly the kind of a case and exactly the kind of a condition that has brought about the decisions of the Republican Supreme Court of Michigan and make them not technical law, but reasonable, fair law. It is the conditions that have compelled them to come to this conclusion.

With Nichols you start with the proposition that he was a candidate for circuit court commissioner and knowingly violated the election laws of Michigan. He swears that he knew it, and smiles when he says it.

Mr. FREAR. Where is that? I have heard it quoted a number of times. I was wondering what the exact language used there was.

Mr. CARNEY. No; he turned out to be Mr. Smith's attorney afterwards. If you will just bear this in mind, this same man, Nichols, was challenger for the Republican Party at the other precinct—by the way, I might say that the office of circuit court commissioner is a very, very minor office. He afterwards turned up, between the date of election and the day of the board of county canvassers, as newly appointed county clerk. On an occasion when I appeared before the board and asked to have a certificate corrected he advised them it was too expensive to get the board of that particular township down to make the correction, and turned up the next day, but one, so he testified, in the pay of Smith, and procured an affidavit, which was afterwards suppressed, from the members of the same board, which, while not exactly false upon its face, really concealed the true situation in some few townships. In other words, he was all the way through this contest, from the election until—

Mr. FREAR. Is that affidavit in the record?

Mr. CARNEY. Yes, sir; and the proof is in the record. He has answered early in the examination you refer to. I will find it for you in a minute.

Mr. SHIELDS. It is on page 330, near the bottom [reading]:

"Q. Did you act or assume to act on the election board in doing that?—A. No, sir.

"Q. You were not performing any of the duties of any of the election board?—A. Just passing ballots.

"Q. That was one of the duties of the election board?—A. Yes, sir.

"Q. And not a duty of any citizen not a member of that board as you understood the law?—A. Yes, sir.

"Q. You understood the law in that regard that day before you began doing that, didn't you?—A. Yes, sir.

"Q. You were a lawyer then?—A. Yes, sir.

"Q. You were a candidate for office too, were you not?—A. Yes, sir.

"Q. You knew that as a candidate for office you didn't have any business to receive ballots, didn't you?—A. Yes, sir.

"Q. You knew that to be the law?—A. Yes, sir.

"Q. Well, knowing that to be the law you went in and acted as one of the inspectors of that election?—A. I did not.

"Q. In place of one of the inspectors of that election, didn't you?—A. I deposited four or five ballots at the request of Mr. Knowles.

"Q. When you were depositing those ballots you were acting as inspector?—A. I just did the manual work; there is no question about that.

"Q. You understood this to be the law at that time?"

Mr. SHIELDS. Then, the objection of Mr. Frankhauser.

"Q. I show you a book here, Revision of 1911, State of Michigan, Laws relating to Elections, compiled under the supervision of Frederick C. Martindale, secretary of

state, Lansing, Mich., and call your attention to page 43 under the heading 'Manner of conducting general elections,' being act 190, P. A. 1891, as amended. The people of the State of Michigan enact: (139) 3612. Section 1. That at all elections at which any presidential elector, Member of Congress, member of the legislature, State or county officer or circuit judge is to be elected, or any amendments to the constitution, the supervisor, two justices of the peace not holding the office of supervisor or township clerk whose term of office will first expire and the township clerk of each township, and the assessor if there be one, and an alderman of each ward in a city shall be the inspectors of election: *Provided*, That in all voting precincts where by special enactment, provisions exist for designating inspectors of election said provisions are not to be superseded, but such officers shall be the inspectors of election under this act. *And provided further*, That no person shall act as such inspector who is a candidate for any office to be elected by ballot at said election. I have read that correctly?—A. Yes, sir.

"Q. You knew that to be the law when you went into that second ward at the polls and deposited ballots in the ballot box?—A. Yes, sir.

"Q. In the face of knowing that, you deliberately did that act?—A. I did at that time; yes, sir."

He was the same man, if you please, that on the 12th or the 14th of November, claimed to be county clerk, and the situation there was that the county clerk who run for the legislature, that in our State the officers were incompatible, and the man could not hold it, and yet the day before election, and for 10 or 12 days, nobody seems to know that any change had taken place, and on the 14th of November Mr. Nichols then announces that he has been county clerk, that the county clerk resigned and he has been county clerk, appointed to fill the vacancy, since the day before election.

Mr. Carney goes further and suggests and asks that the officers of Sunfield and Carmel Townships be called in, so that some investigation may be made of returns which Nichols says was unnecessary and that it was no use going to the expense and refuses to do it, and yet the next day and the day after he went down through these townships getting the affidavit, and admits himself that he was in the pay of Smith—an affidavit, if you please, which counsel for contestee first tried to suppress and deny having it, and Nichols afterwards swore that he delivered the affidavit to Smith, and two days later it was produced.

Mr. FREAR. Does the evidence show he was in the pay of Smith at the time of the election?

Mr. SHIELDS. I do not think so.

Mr. FREAR. Subsequently, when this affidavit shows that he was, then?

Mr. CARNEY. Yes, sir. I appeared before the board, I think, either the 12th—one day intervened between that time, at any rate, and then this fact never appeared until the time of the hearing that he was in Smith's pay.

Mr. FREAR. It appears in the record that he really was in Smith's pay?

Mr. CARNEY. Yes, sir; he said he made this trip for Smith, as his attorney.

Mr. FREAR. After he made the affidavit?

Mr. CARNEY. Yes, sir.

Mr. FREAR. How long after the election?

Mr. CARNEY. I should judge about 10 days. It was within the week that the county canvas was made.

Mr. FREAR. Is there any contention that he was in the pay of Smith, or that he was acting for Smith at the final occasion?

Mr. SHIELDS. It shows it was his prime interest in that election.

Mr. FREAR. There is nothing in the record?

Mr. SHIELDS. I do not think so.

Mr. CARNEY. There is this in the record—there is some contention as to the meaning of the statute, in all fairness to the other side, with reference to the opening of the returns. Our contention is that the true meaning of the statute is that the returns are not to be opened until the meeting of the county canvassers. The record shows that Nichols not only opened the sealed packages, which we contend was not proper, although no decision has been rendered upon the question, before the meeting of the board of canvassers, but that he permitted Smith's son and Mr. Smith's daughter to have these opened packages outside of the office of the county clerk and in their possession, and in the possession of this man Pray, who then was not an officer of any kind.

The CHAIRMAN. Were those tally sheets and tally books the same tally sheets or tally books that the board of county commissioners would canvass?

Mr. CARNEY. The statute provides they must canvass those tally sheets.

Mr. FREAR. Was there any discrepancy that was reported by the inspectors at the election?

Mr. CARNEY. That is, were the returns——

Mr. FREAR. Yes; I know, but were they canvassed that night at the election?

Mr. CARNEY. No. You do not understand—not canvassed, simply sealed.

Mr. FREAR. You make a count of your tally sheets at the night of the election, and that is given publicity, of course. Was there any question about that—any change?

Mr. CARNEY. There were left me 200 and odd votes until these votes became circulated publicly, so far as press accounts, I mean, of course, unofficial.

Mr. FREAR. Did you find unofficially that there was a discrepancy in that particular precinct?

Mr. CARNEY. I could not answer that question, but this was not any particular precinct; this was all the returns from the whole county of Eaton. You asked me if there is any discrepancy. There was this much of a discrepancy: Nearly every Republican paper, but with one or two exceptions, and the Associated Press accounts, that is, their message accounts, gave me the election at between two and three hundred, and to such an extent that Frederick Martindale, a Republican secretary of state, certified my name as the man elected, from the Associated Press and the newspaper accounts, to go on the unofficial roll. There was that much of a discrepancy turned up afterwards.

Mr. FREAR. You appreciate that the first reports are not necessarily of any value, because a newspaper report may leave out a whole precinct?

Mr. CARNEY. But you ask if there was a discrepancy, and that answers your question, because every one of these reports came to the same conclusion.

Mr. ELDER. How long after that election before it was found out that according to the returns Smith was elected?

Mr. CARNEY. It was two weeks, in round numbers.

Mr. ELDER. Was Smith claiming the election during this time?

Mr. CARNEY. I think so. He can answer that better than I can.

Mr. SMITH. I did not hear the question.

Mr. ELDER. I have never met Mr. Smith. I asked if Mr. Smith was claiming the election before the county board?

Mr. SMITH. The Democratic county chairman in my county figured the vote the next day and tabulated it, and it never was changed a vote from the time he gave out these returns.

Mr. CARNEY. He never saw the returns until they came back from the possession of Mr. Smith's son and daughter.

Mr. FREAR. There was one point there, Mr. Carney: When you say these ballots were opened at that time, by this man Nichols, was any one else present when he opened them? Where is the testimony about that in the record?

Mr. CARNEY. The votes came in one by one at different times.

The CHAIRMAN. I would suggest leaving that until we get to it, and let him finish ward 2.

Mr. SHIELDS. Your question, I think, is entirely pertinent, because it includes what happened to the returns from ward 2.

Mr. CARNEY. Nichols turned up afterwards as county clerk, and had custody of all the papers.

Mr. SHIELDS. On election night all of the returns have to be counted, of course, and have to be counted continuously, and then the ballots and one tally sheet is put into the ballot box, and the other tally sheet is mailed to the county clerk. They are mailed or carried to him. The records and certificates that are made, signed by the election officials, one of them is sent to the judge of probate or register of probate, who is a member of the canvassing board, the other is sent to the county clerk, together with the second tally sheet. The controversy between us is as to whether the county clerk has any right to open those papers until before the county canvassing board convenes, which meets a week from the Thursday following the election.

The CHAIRMAN. Mr. Shields, if I understand your law, the inspectors and clerks make out a tally sheet, as a result of the vote, in duplicate?

Mr. SHIELDS. Yes, sir.

The CHAIRMAN. One set goes to the probate court and the other to the county clerk?

Mr. SHIELDS. Yes, sir.

The CHAIRMAN. Which set do the county canvassing board canvass the vote from?

Mr. CARNEY. The statute provides it must be canvassed from those of the county clerk.

The CHAIRMAN. Who is the board of county canvassers, the judge of probate, and county clerk?

Mr. CARNEY. The board, I think, is appointed by the board of supervisors.

Mr. SHIELDS. It is a committee of three. They are individuals fixed and appointed by the board of supervisors at the previous session, in October.

The CHAIRMAN. Have you attached to the original papers here a set of tally books and tally sheets, with the sheets showing results in the precinct?

Mr. SMITH. They are in the possession of the clerk.

Mr. STEPHENS. Allow me to follow up what Mr. Frear was asking. It was just stated that one of the tally sheets was sent to the probate judge and one to the clerk?

Mr. CARNEY. Yes, sir.

Mr. STEPHENS. Was there any difference between the tally sheets sent to the clerk and afterwards given to Mr. Smith's daughter and son and the one that went to the probate judge?

Mr. CARNEY. There was one set, so the testimony showed, although it was afterwards disputed, never returned to the probate judge. There were six sets at the probate's office that were opened. In fairness, it might have been opened in the mail. Some of the records showed they were. In fairness to Mr. Smith on this proposition I make that statement. This is alleged in the petition. That question has never been passed upon by the supreme court. It looks on the face of that statute and from all intents and purposes as if no one should open these returns until on the day the canvassing board should meet, and it has been practiced in some of the counties. We found afterwards they had done this, but never to let them go out of their possession and let them be hawked about, as was done in this case; but that has been the practice in our county. In our county they have been kept under seal and kept in the vault. That is the condition, I think, they had in three or four of the counties. We found that condition existing.

Mr. FREAR. Where is that reference to Mr. Smith's son and daughter in the record?

Mr. STEPHENS. On page 38 you will find that.

Mr. SHIELDS. I think it is the bottom of 43, too, in Mr. Robinson's testimony.

Mr. FREAR. Where were these examined; in the clerk's office?

Mr. CARNEY. By whom?

Mr. FREAR. You said, as I understood, that Mr. Smith had some of these returns?

Mr. CARNEY. I said that testimony shows that Mr. Smith's son and daughter were seen coming into the clerk's office with these books open. They did not appear as witnesses to explain it, but I think some statement was made that they had been over to the treasurer's office to put them on the tabulator.

Mr. FREAR. Which books?

Mr. CARNEY. All of the returns in the different election places.

Mr. STEPHENS. They tabulated them at the office of the treasurer, is what the record shows.

Mr. BORCHERS. If the chairman please, I would like to refer here to that tally sheet in the box now. I have found what they say here and what the law says [reading]:

"After the ballots are counted they shall, together with one tally sheet, be placed in the ballot box, which shall be securely sealed in such a manner that it can not be opened without breaking such seal. The ballot box shall then be placed in charge of the township or city clerk, but the keys of said ballot box shall be held by the chairman of the board and the election seal in the hands of one of the other inspectors of election."

That will be found on page 19 of the brief of the contestant.

Mr. CARNEY. We discovered in the record that very few of the electors properly interpreted that law, and in many instances they were all put in a bundle and sent to the township clerk and then to the city clerk, and there is not over half of them in the boxes at all.

Mr. BORCHERS. The contention here is that the law does not require one of these tally sheets to be placed in the box after sealing, and my impression is, according to the law, it did say that, and this surely demonstrates that that was the law, and the other was forwarded to the county clerk.

Mr. FRENCH. Do you raise that question in challenging the validity of the vote in all precincts in which failure occurred?

Mr. CARNEY. The question is raised in the condition. It is not discussed in the brief, as I recall it, more especially so in the conduct of Nichols.

Mr. FRENCH. Do you apply it to all these precincts?

Mr. CARNEY. It applies equally to all.

The CHAIRMAN. We think No. 2, where Nichols handed out the ballots—he said in his testimony he only handed out four or five. Do you claim that he did anything else in that district?

Mr. CARNEY. He did not hand out the ballots. You misunderstand that. He took the ballots and put them in the ballot box.

The CHAIRMAN. He handed four or five.

Mr. SHIELDS. I do not think there is any contention there, except as to difference as to time. He claimed that it was from 20 minutes to half an hour, and other witnesses that it was from an hour to an hour and a half.

The CHAIRMAN. Do you claim that in addition to supplying ballots he influenced any voters?

Mr. SHIELDS. I do not think anything in the record shows it, excepting if a man knows he is running for office himself he should not inject himself into that machine.

Mr. FREAR. Did he inject himself?

Mr. SHIELDS. Yes, sir.

Mr. FREAR. I only read over hurriedly that he was asked by one voter at the time the inspector stepped out to remain there, but as to the question as to whether he injected himself, and as to the question whether in the judgment of the inspector who remained with him, was that there were 7 or 8 ballots that were put in during that time. He testifies that there were 4 or 5, but the testimony of your witness was that he might have been there an hour and a half. That is the situation as to the two sides?

Mr. SHIELDS. Yes.

Mr. FRENCH. Is it not true that he himself was an inspector—a Republican inspector?

Mr. FREAR. He was simply asked to act as an inspector by one of the others.

Mr. SHIELDS. He was not qualified in any way.

Mr. CARNEY. He claimed to be a challenger.

Mr. FRENCH. Would not that give him the right to circulate there to some extent?

Mr. SHIELDS. No. It gives him the right to be there for challenging any votes that he cares to challenge. It does not give him—

Mr. ELDER. That would be the reason he should not act as an official.

Mr. SHIELDS. The conditions show his additional disqualifications.

Mr. FREAR. Is there anything in the record showing the political color of these inspectors?

Mr. CARNEY. The inspectors?

Mr. FRENCH. How he came to be involved at all was through one alderman being taken sick.

Mr. SHIELDS. We say not. His entire history shows he became involved because he insisted on—

Mr. FRENCH. Was not one of the aldermen taken sick, and did he not call upon another man to take his place, and then the votes were deposited by Nichols at the request of one of the aldermen, and that he deposited 4 or 5, the chairman says, and, as I recall the testimony, 6 or 7?

Mr. CARNEY. Bearing on this question, the character of this man and what he has been perhaps would be something that the committee would be entitled to. The fact is that he was formerly justice of the peace, and was charged substantially with embezzlement and conspiracy, and under a resolution of the board of supervisors he came across with the money that he had embezzled.

Mr. FREAR. Is that in the record?

Mr. SHIELDS. That is in the record, showing what kind of a man this fellow is.

Mr. STEPHENS. What is his name?

Mr. SHIELDS. John Nichols.

Mr. FREAR. Was he convicted of embezzlement?

Mr. SHIELDS. No, sir.

Mr. FREAR. Or conspiracy?

Mr. SHIELDS. The record shows, as I stated, he was a justice of the peace; that this resolution was reported to the county board; and that afterwards—after, I think, the resolution provided they should take steps to remove him from office—they made a settlement with him, and he agreed to pay back the money, if certain portions of the resolutions were withdrawn; and he paid back the money.

Mr. FREAR. That he agreed on that condition?

Mr. SHIELDS. Yes, sir.

Mr. FREAR. Did he so testify?

Mr. SHIELDS. Yes, sir.

Mr. BORCHERS. I would like to ask a question. The statement has come up that he announced himself as being county clerk. I would like to know if he, as county clerk, received this copy of the tally sheet, as the law requires to be sent to the county clerk. Do you know anything about it, or does the record show?

Mr. CARNEY. The record shows that he was in the office. He was deputy, as well, and handled it and gave out the returns, and claimed he had tabulated them, when our boys went over there to get the facts; and at that same time gave out the returns and gave out a statement, which was 112 less than it was then. This was after he put them on the adding machine and opened the official package.

Mr. FREAR. What is his official position now?

Mr. CARNEY. I do not know.

Mr. FREAR. Has he any official position?

Mr. CARNEY. I could not answer.

Mr. FREAR. Is there anything in the record showing that?

Mr. CARNEY. He is circuit commissioner, unless he has resigned.

Mr. FREAR. Appointed by whom?

Mr. SHIELDS. That is an elective office.

Mr. FREAR. By the entire county?

Mr. SHIELDS. Yes.

Mr. FREAR. And then, of course, he would have the right to suggest that in the estimation of the people he was justified in his position.

Mr. CARNEY. It would not indicate anything. It does not make any difference who would run, if you want my judgment on it. Such officers go in with the ticket.

Mr. BORCHERS. What right would that have given him to indicate to the people that he had the right?

Mr. FREAR. I do not know. I am not discussing the question.

Mr. BORCHERS. I understood you to make the statement that his being a candidate would give him that right.

Mr. FREAR. No; that he had the confidence of the people.

Mr. BORCHERS. He was simply a candidate at that time.

Mr. FREAR. I am speaking now about their confidence, as to the question of his being charged with embezzlement, rather than going to the question of character. I understood his character was severely in question. The people had elected him to a county office, is what I have reference to.

The CHAIRMAN. Suppose we take up the next.

Mr. SHIELDS. I want to say in that connection, the same case, McCall v. Kirby, decided this point-blank, that a man not a member of the board handling the ballots, receiving them and putting them in the box—the language is exactly applicable to that, and I have already read that decision.

The CHAIRMAN. A parallel case?

Mr. SHIELDS. A parallel case exactly.

The township of Carmel: In that township, at 2 o'clock in the afternoon, they opened up the ballot box, laid the ballots out upon the table, and let two men go ahead and count, and reclosed the ballot box and went on receiving ballots and putting them into the ballot box, and as to the ballots turned out on the table, the board turned them over to two men, who proceeded to count the ballots in the same room where the election was being held, and these men passing by, one ballot fell on the floor and some voter picked it up and put it back on the table.

Mr. FREAR. What was the reason for that on that occasion?

Mr. SHIELDS. The only reason I can give is that their ballot box got full.

Mr. FREAR. You get that from the record, do you not?

Mr. SHIELDS. Yes; I was not there.

Mr. CARNEY. The record shows that no provision at all was made for anything of the kind, and in fact there was not any good reason for that, because there was another box that could have been used.

Mr. FREAR. You say that is the real reason?

Mr. CARNEY. Yes, sir.

Mr. FREAR. Does not the record show that the parties who had charge of that ballot box opened it for that reason?

Mr. CARNEY. Yes, sir.

Mr. FREAR. We want the record particularly, and then your views.

Mr. CARNEY. The record also shows, by the supervisor, that there was another box there that was empty.

Mr. SHIELDS. I said the record shows the reason was that the ballot box was full and they wanted to use the same box again.

The CHAIRMAN. The reason you gave, Mr. Carney, was the general practice to do as they please?

Mr. CARNEY. The reason it was opened was that they did not seem to pay any attention to the rules. This man knew he was violating the law, as Nichols did.

Mr. FREAR. This was not Nichols.

Mr. CARNEY. I say, "as Nichols." He said he knew it was a violation of the law, and knew he had no right to do it.

Mr. SHIELDS. Simply they had no right to do that. It is set out in the statute that nobody has any right to touch the ballot box until opened for the day. Supposing the number of ballots exceeds or is less than the number on the ballot list. Then they

have got to, too plainly, to make them even, and nobody has the right to open the box or touch it in any way until the polls are closed for the day. In some parts of the State—for instance, Detroit—they have a specially chartered provision that gives the right to a 2 o'clock count; but it does not apply out in this place and out through the country district or outside the city of Detroit. You take those conditions as we see them, and nobody has a right to touch those ballots except as officials, and then at the proper time and place; that that was violated openly, specifically, glaringly, and they opened it in the middle of the afternoon to count—two men not members of the board. I do not think there is anything in this record to show how they used this information, if they used it at all, but right in the sight of everybody and of the voters going by; that that of itself is a specific, open, and improper violation of the law that leaves it possible for men to make improper use of the information, and illustrates the spirit and atmosphere that pervaded this whole county. I do not say there is any specific instance in the record.

Mr. FREAR. Mr. Cushing, who was a Democrat, according to the record, so testifies, himself; he was sworn to count these ballots, and that he did so in company with another man appointed by the board, whether they had the authority or not; and the reason given was that the ballot box was full at the time and they had to make space for the additional ballots. He so admitted, and that he was sworn before he counted the ballots. The record shows that.

Mr. FRENCH. He was the Democratic challenger who acquiesced in this method of counting the ballots, too, did he not, according to the record?

Mr. SHIELDS. He did it.

Mr. FRENCH. Before the box was opened, even; and, as I understand it, he and one other candidate for a county office acquiesced, as a matter of procedure, and they all accepted it as an emergency measure in good faith. That appears to be the record, as I understand it.

The CHAIRMAN. How many ballots did they count that afternoon?

Mr. CARNEY. I think around 160 ballots.

Mr. STEPHENS. About two-thirds of the number, it says.

The CHAIRMAN. Do you claim, Mr. Shields, that the counting of those ballots affected the result in that precinct?

Mr. SHIELDS. I do not claim that, because I do not know, Mr. Chairman. There is no way of determining that, and I hope you will get into the spirit of our contention.

The CHAIRMAN. I have got the spirit of your position exactly. [Laughter.]

Mr. SHIELDS. Not my spirit; the spirit that exists. The same condition that will permit and bring about these violations of law is such we are unable to go back of them to see whether good or bad. I do not want to state that this was done with the deliberate intention of committing crime, when I have not any proof. I am showing the conditions that existed. We have not any proof back of the fact that they did violate a specific provision of law.

Mr. FRENCH. Will you let me ask a question right there?

Mr. SHIELDS. Certainly.

Mr. FRENCH. Did it occur to you that Congress might follow precedents in other States that might not coincide with the precedents in Michigan, and that it might be advisable to go into the facts in each particular case?

Mr. SHIELDS. Certainly.

Mr. FRENCH. For instance, in this case if it were to be found that the election officers proceeded contrary to the law of Michigan, I assume that your statute would invalidate the votes of that precinct. Did it occur to you that the Congress, being the judge of the qualifications and elections, might inquire into the intent?

Mr. SHIELDS. Yes, sir.

Mr. FRENCH. Might inquire into the question of whether there was fraud?

Mr. SHIELDS. There is no question about it.

Mr. FRENCH. And if there had been apparent fraud, you would have brought that out?

Mr. SHIELDS. If we had the proof, if the record showed it—we are on common ground there, my friend.

Mr. FRENCH. Is it a violation of the orderly procedure, as you understand it, under the law?

Mr. SHIELDS. In this particular one it is violation of orderly procedure, as you put it. I see in that differences in the Nichols case and soliciting cases in those precincts; that, I insist, is a specific fraud.

Mr. FREAR. Between ourselves, I think this is a far more dangerous practice than exists, but I have assumed from the record itself that the parties were acting in good faith.

Mr. SHIELDS. For myself—

Mr. CARNEY. May I just make this suggestion to Mr. Frear on that proposition? It might not amount to actual fraud, but you let clever politicians know in the middle of the afternoon what one precinct shows, and I will venture that it can be made up in a perfectly legitimate way, outside of the fact that it is known or the basis for changing or using the information to an extent that you can not estimate even.

The CHAIRMAN. The worst you can say here is that you do not charge actual fraud, but it did destroy the secrecy of the ballot?

Mr. SHIELDS. Absolutely.

The CHAIRMAN. Proceed, Mr. Shields.

Mr. SHIELDS. I do not think it would be necessary to show further as to that township. That is the condition, and the authorities are cited and the statute is right there.

I want to pass to the township of Winsor and discuss the situation as it existed there.

The CHAIRMAN. What is the page?

Mr. SHIELDS. On page 14, beginning at the bottom.

Mr. FRENCH. It is wrongly numbered; it should be VI instead of V, as the preceding one is also numbered V.

Mr. SHIELDS. You are correct. That is the first time I noticed that, and I am much obliged to you.

The provisions of the statute are stated in my brief there, that require the initialing of ballots and the correct initialing of them. The law has gradually developed in Michigan, as in other places. At first it had to be initialed on the back, then had to be initialed on a certain corner and then another corner. It has, however, come to the position where the ballot must be numbered in the upper right-hand corner, should be perforated, and the initials of the inspector should be directly under the line, so that the initials are upon the ballot in the box, and when it is being counted, for the purpose of determining, I suppose, that it is a legal ballot, and the statutes provide that no ballot without an initial shall be passed out by the inspector, that no ballot without the initials upon it shall go into the box, and that when the box is opened if there is any ballot without an initial it must be rejected and thrown aside.

In the township of Winsor the returns were sent in, and under the laws of the State of Michigan—I am going to be frank about it—the ballots after the count shall be returned to the ballot box and it shall be sealed up and kept until the next succeeding election. Not a word of the condition of the ballots in Winsor Township became known until the time to use the ballot box in April of 1913, the next succeeding election, when they should be opened, taken out and destroyed, and the box used for the election then coming.

The CHAIRMAN. What is the object of preserving those ballots?

Mr. SHIELDS. I suppose that the object is so that in case of a recount, which they have a right to after some considerable period after election. That is the method of preserving the box for another count.

Mr. FREAR. Who keeps them?

Mr. SHIELDS. My impression is that the clerk keeps the ballot, the chairman keeps the key, and a third keeps the seal. I realize I ought to know all these things specifically. One member of the board keeps each. When they were opened up in the spring for the recount, it was found this board had either ignorantly kept still or paid no attention to it. It was then discovered that not a single ballot had the initials upon them. Then Mr. Carney learned that—the election was the 5th or 6th of April and he learned it on the 12th—and went over there on the 14th, investigated and filed his additional notice on the 18th and served it.

The CHAIRMAN. What is the vote in that precinct?

Mr. SHIELDS. The original vote was Smith 174, original vote for Carney 92, a difference of 82 votes.

That exact provision has been covered by the Michigan Supreme Court, holding absolutely void the entire returns of the precinct.

The CHAIRMAN. I think there is more meat in that provision than anything heretofore offered.

Mr. SHIELDS. That is the way we look at those things.

Mr. CARNEY. The statute provides that.

Mr. SHIELDS. I have stated what it provides. First, no ballot shall be passed out by the inspector without initials upon it, no inspector shall put the ballot in the box without the initial, and no ballot in the box without the initials shall be counted.

Mr. FREAR. Were those ballots handled by the canvassers?

Mr. SHIELDS. They were not.

Mr. FREAR. Who was it that saw those ballots?

Mr. SHIELDS. The board of election.

Mr. FREAR. I mean subsequent to the time when the attention was called to it?

Mr. SHIELDS. I do not know how that information came out. No one should see it except the board.

Mr. FREAR. They were destroyed?

Mr. SHIELDS. In April.

Mr. FREAR. Who was it that saw them before they were destroyed?

Mr. CARNEY. This is the way it came out, as I understand it: This contest was going on over there and every conceivable election question was in the air, and these fellows in a general kind of a way got to talking over this question. It seems to me there was some little argument about it at the time they conducted the election. Then when they met in the spring to burn the ballots they talked it over then and it leaked out at that time.

Mr. FREAR. Neither of the parties to this proceeding had a chance to inspect those ballots?

Mr. CARNEY. They had no chance.

Mr. FREAR. So the only information you had would be where the parties would allege their own failure to put initials on?

Mr. CARNEY. Yes, sir.

Mr. FREAR. And the failure to put initials on is what disqualified?

Mr. CARNEY. That is correct.

Mr. FREAR. Notwithstanding there was no question that they were handed out and voted and counted properly?

Mr. CARNEY. This has bearing upon that question; this was a Republican precinct. They were all summoned to appear before the commissioner taking their testimony and all of them disclosed just what was done.

The CHAIRMAN. Did they all testify that these ballots did not have the initials upon them?

Mr. CARNEY. Three of them.

Mr. FREAR. What did they give as the reason?

Mr. CARNEY. Ignorance.

The CHAIRMAN. Did they testify that after discovering this defect that they did not put the initials of one of the inspectors upon the ballots as they were handed to the voters?

Mr. CARNEY. They did not discover it. It was their ignorance of the law, as I recall the testimony until during the taking of the testimony in this case. I do not know whether some of them looked it up or not.

Mr. SHIELDS. The record shows the initials on the perforated part.

Mr. CARNEY. They put the initials on the perforated part?

Mr. SHIELDS. On the part to be torn off.

Mr. FREAR. They got it in the wrong place?

Mr. SHIELDS. Got it in the wrong place, and it was torn off before the ballot went in the box. The law provides it must be on the ballot. This corner upon which the initials were is torn off and does not go into the box; that is merely for the purpose of identifying the ballot up to the time it goes in the box. The number is on that corner—as the ballot is handed the number is written down and the name; then the voter takes it through and comes back and announces his name and number. The tally clerk looks to see if that number of ballot was given to that particular man. If so, then the inspector tears that off and throws that on the floor and deposits the ballot. So the ballot has no distinguishing mark, but it should be identified by the inspector by having the initials still on the ballot.

Mr. FRENCH. Is it not true that the law has been changed repeatedly touching the place where the initialing shall be?

Mr. SHIELDS. In order to become more specific, certain, and definite.

Mr. FRENCH. And is it not true that this particular official who initialed these series of ballots on the wrong side of the perforated line did so in good faith and that all the officials at that particular voting place supposed that he was initialing according to the latest law?

Mr. SHIELDS. You might draw that inference from the record. There is nothing to the contrary in the record. I am his attorney and may be politically biased.

Mr. FRENCH. I want to raise this question and be fair; you do not challenge that. I understand it is very generally admitted that while it was contrary to the express provision of the statute, yet that this particular official thought he was making the initial according to law, and it was a procedure that was agreed in and concurred in by all officials.

Mr. SHIELDS. I do not claim the record shows anything to the contrary. I do not want you to get mixed on my position. I doubt personally the possibility of so many of these things happening without there being some motive other than real good faith.

The CHAIRMAN. Has the supreme court passed upon that?

Mr. SHIELDS. Exactly.

Mr. FRENCH. In this particular case would it not be very apparent in a precinct that is so overwhelmingly Republican that there could have been no deliberate purpose on the part of those supporting Mr. Smith to have done something that would have made an invalid election in a precinct overwhelmingly for him nearly two to one?

Mr. SHIELDS. Votes were getting mighty valuable last fall, and so far as your attitude is concerned they would be just as apt, knowing where the majority is overwhelmingly one way as the other. If you have had any experience with elections in the upper peninsula and find it takes from one day to two weeks to find out anything has happened, and then they always presented enough to make it right, you would lose faith in the good faith of big majorities. I am talking from what I know about those things. Pardon me, Mr. Chairman.

The supreme court has spoken with absolute frankness and finality, and held that the whole precinct should be thrown out, and the case is quoted in full, page 16 of the brief (*People ex rel. Anderson v. Rinehart*, 161 Mich., 585). If the gentlemen wish, you can read it, or if it would make it any more clear I will do so.

The CHAIRMAN. As you claim, the whole precinct should be excluded?

Mr. SHIELDS. In this whole proceeding it seems to me we are entitled to come down here and accept and accede to the solemn declarations of a Republican Supreme Court of Michigan.

Mr. FREAR. Why do you say "Republican supreme court"?

Mr. SHIELDS. Because, if you please, it is worth while. We are here as Democrats. I am here, if you please, in my political belief. I understand very plainly and very frank I am going to be. We want the Republican members of this committee and we want the Democratic members of this committee to see this contest as we in Michigan see it, and as part of seeing it and as part of adopting the mental attitude with which you investigate this question, it seems to me it is worth while to know how those of a different political faith in our State have interpreted the same kind of action.

Mr. FREAR. Did you ever hear the Supreme Court of the United States or any other court classed as "Republican" or "Democratic"? I am asking you why you do it?

Mr. SHIELDS. Because it is the fact.

Mr. FREAR. I am not sure of that; neither are you. Men change their politics in a very short time occasionally. It is an objectionable term.

Mr. SHIELDS. If it is objectionable, I take it back. I do not want you gentlemen to feel that our supreme court is partisan. Back in Michigan nobody would insinuate that; but it is the situation.

Mr. FREAR. We accept the fact that these men were elected Republican unanimously.

Mr. SHIELDS. Yes, sir. At the present time, with the exception of Judge McGrath and Judge Morris on the bench, and I think it is pertinent to speak of their politics, not necessarily in making decisions, but men are necessarily biased to a certain degree by their personal views, and in one of the cases I shall call attention to, the only Democrat on the bench took one view and all of the Republicans took the other.

Mr. FREAR. He may have been right.

Mr. SHIELDS. I think he was, but he did not make it the law of the State of Michigan. Do not understand me as trying to bias your minds, but we can not understand how men decide questions or how they view questions unless we know their personal views.

Mr. FREAR. You suggested that several times.

Mr. SHIELDS. If I have, I will try not to do it any more.

Mr. CARNEY. If you will excuse me.

Mr. SHIELDS. Yes, sir.

Mr. CARNEY. This particular statute is a little different from any other Michigan statute. Most of the other mandatory statutes say that this shall or shall not be done.

Mr. FREAR. As to the initialling?

Mr. CARNEY. No; most of the other statutes Mr. Shields has referred to, for instance: A person depositing ballots who is not a member of the board, and so on. But this particular statute goes ahead and says it shall not be, and expressly states that such a ballot shall be void and not counted; that this is not only a holding of the supreme court, but by the statute itself made absolutely void.

Mr. SHIELDS. I want to read to you a part of this decision, because it reaches to not only the meat of this particular case in this precinct, but some of the others—for instance, Sunfield [reading]:

"It is urged that voters should not be disfranchised by the carelessness or fraud of inspectors, and we are cited to many cases where courts have refused to exclude votes for election irregularities. Courts are always reluctant to deprive electors of their votes, or to do violence to the expressed will of the public, but these regulations are made in furtherance of a design to protect electors in the exercise of their electoral privileges. In the case of *McQuade*, supra, it was said by Mr. Justice Grant:

"These provisions of the law must be held mandatory, or else the purpose of the law is defeated, and the opportunities for fraud are increased rather than diminished. If an inspector or other person be permitted to enter the booths with the voters, the danger is far greater than under the old system, where there was some opportunity to see and detect fraud. Under this practice venal voting could be readily accomplished. The law is designed to secure absolute secrecy to the elector, and thus prevent all opportunity for corrupt practices. The law does not permit parties to profit by such frauds, though they may not have participated in the fraud. The rule laid down by the text writers is as follows: "When fraud on the part of the officers of election is established, the poll will not be rejected, unless it shall prove to be impossible to purge it of the fraud. When the result of a poll, as shown by the returns, is false and fraudulent, and it is impossible to ascertain the actual vote from the other evidence in the case, the vote of such poll must be wholly rejected." (Paine on Elections, sec. 499; McCrary on Elections, sec. 190, 192.)

"This rule is founded in good sense and is sustained by the authorities."

"We said in the case of *Stillson*, supra:

"We have frequently held that electors are not to be deprived of the result of their votes by the mere mistakes of election officers, when such mistakes do not indicate that the result has been changed thereby, and many things may occur that can be treated as irregularities. (See *People v. Avery*, 102 Mich., 572; 61 N. W., 4; and authorities cited.) On the other hand, where fraud appears upon the part of the inspectors the voter must sometimes be deprived of his vote. (*Attorney General v. McQuade*, 94 Mich., 439; 53 N. W., 944.) And this must always be the case where mandatory provisions are disregarded, if the result would be thereby changed."

"Continuing upon the subject of the constitutionality of the law, which is attacked in this case as it was there, we said much in the last-mentioned case that can as well be read there as to repeat it here. We held these laws within the powers expressly conferred by the constitution, although they might require some sacrifice by the individual for the public good. The statute expressly provides that such ballots as these shall be neither placed in the box nor counted, and we have no alternative but to apply the law.

"The judgment of the circuit court is reversed and a judgment of ouster entered against the respondent and in favor of the relator.

"*Ostrander, Moore, McAlvay, and Brooke, Jj., concur.*"

MR. FREAR. Was there any fraud alleged in that case?

MR. SHIELDS. There was none whatever.

MR. CARNEY. The same facts existed there as here; they initialed the ballots.

MR. SHIELDS. The entire case is quoted.

Next is *Battle Creek*, page 18 of the brief. We have sufficiently discussed how the reports come to the county clerk, so that we understand those, I think; that at the end of an election the ballots and the tally sheet are put in the box that stays in the community. Then the inspectors of election make out two certificates of the result of the election. One of those is sent to the probate judge or the probate register; the other is sent to the county clerk, together with the tally sheet.

MR. BORCHERS. They are sent in separate envelopes, though; not sent together?

MR. SHIELDS. Sent to the county clerk?

MR. BORCHERS. Yes, sir.

MR. SHIELDS. That is the way I understand it. When those returns got in there they showed Smith had received 31 votes and Mr. Carney 23 votes. The county canvassing board, somebody knowing the local conditions, thought that was not as many votes as there were out there, so they took steps to correct them, and I think sent for the township board, did they not, Mr. Carney?

MR. CARNEY. Correct.

MR. SHIELDS. And had them before them. When the county canvassing board first opened the ballot box brought there by the township board for the purpose of discovering the error, they found in it the rolls of ballots and a certificate and the tally sheet.

MR. CARNEY. No, let me state that condition. They found nothing but the ballots at that time. They took the rolls of the ballots out. There were some figures on the back of some of the ballots, and they made a record of those figures. That is all that was done at that time. They discovered the statute prohibited permitting any-

thing except portions of the returns or papers bearing upon the returns, and they came to the conclusion they could not use those figures they had obtained.

Mr. FREAR. The first package contained only ballots?

Mr. CARNEY. That is all; so far as proof shows.

Mr. FREAR. And those ballots should have been retained, should they not, in the precinct?

Mr. CARNEY. Yes, sir.

Mr. SHIELDS. They were in the box.

Mr. FREAR. These were sent in by mistake?

Mr. CARNEY. No; let me tell you how this came about. They discovered or thought there were more votes than the reports showed on their face.

Mr. FREAR. They had received their returns first?

Mr. CARNEY. Yes; they had opened them, and received them. Then they sent for this board to bring the box over there. Nobody had anything to do with them, as I understand, excepting the authorities there, the county board. They then started to make a return of their own, and to correct the returns of the inspectors before making their canvass, and they wrote in red ink—

Mr. FREAR. After they had received the box?

Mr. CARNEY. After they had received the box, what they had found on the back of these ballots in the box. As a matter of fact, I contend—contended then and contend now—that under the Michigan decisions this is the only forum by which any correction could be made.

The CHAIRMAN. Mr. Carney, do not the laws of Michigan provide that any candidate feeling aggrieved at the result can file petition and have a recount?

Mr. CARNEY. Yes; but our supreme court has said that does not give the candidate for Congress that right; absolutely settled that question.

Mr. FREAR. Have you that decision here?

Mr. CARNEY. I can get it for you.

Mr. SHIELDS. Some question came up in the MacDonald case.

Mr. CARNEY. In the Belknap-Richardson case.

Mr. FREAR. Then they made their report.

The CHAIRMAN. Let Mr. Carney state what occurred.

Mr. CARNEY. They made this correction on their books. As a matter of fact I went over there in person. I had Climax and some of these others in the same condition. I contended that I was not entitled to a recount; there is no question about that in Michigan. Our courts sustain us on that, because they have already passed upon it. The statute provided they had a right to call the board in for the purpose of examining the papers in the box, but that they should not remove the ballots. They finally discovered they had gone beyond anything they had a right to do. The prosecuting attorney was there with me, and we discussed the matter, and I went away. Sometime after that—the next day, I think—Mr. Smith, Mr. Davis, and Mr. Hoag, and three or four others, his campaign managers and attorneys, appeared, and at their request this box was brought before the board again. At this time they did not remove the ballots, but they removed a paper, which purported to be a complete tally, unsigned by anyone.

Mr. FREAR. That had not been forwarded?

Mr. CARNEY. That had not been forwarded; this was not a tally sheet. There was no tally sheet in this box, as the statute provides.

Mr. SHIELDS. This paper was not in there when the box was first opened at the previous meeting.

Mr. CARNEY. This paper had no signatures upon it, was no part of the returns in any way. They used this to correct their returns a second time, and the second correction is the correction that they used in making their canvass. This paper no one claims to have seen in the box at the time the ballots were taken out in the first place. You see, this was the second precinct.

Mr. FREAR. Upon what theory did they use it?

Mr. CARNEY. They used it upon the theory that the statute expressly prohibited taking out the ballots at all.

Mr. FREAR. What did they assume that to be?

Mr. CARNEY. They assumed that to be the correct return. Mr. Christian testified—a member of the board—that this was a little data that he made during the taking of the canvass. The evidence shows, as a matter of fact, the paper he claimed to have made was a piece of paper, I think, 3 or 4 feet, something like that. This piece of paper was a small piece of paper, an ordinary sheet of tablet, as I recall—just a little piece of blotting paper. The evidence also shows that at the hearing this box had been so tampered with, somehow, somewhere, that this paper could have easily have been put into the box, or any other paper could have been put into the box, and it

was in such a shape that under our statutes it could not be counted. That is substantially the record on this proposition.

Mr. SHIELDS. Republican county clerk, Hart, testified that the edge of the box—what they call the "ridge" edge, seemed to have been bruised or jammed and so loose it could be raised half an inch, and the paper from which this record was made could have been inserted. No one found it there the first time.

Mr. STEPHENS. There was a difference of opinion between the witnesses as to whether or not that could have been done.

Mr. SHIELDS. Was there a difference of opinion?

Mr. CARNEY. Mr. Hart was the only witness on that; he first testified one way and at another time differently.

Mr. FRENCH. After all, going into the results of the modification of this board of canvassers of the returns as it came from the precinct, was not that modification made on account of what they understood to be a discrimination in the returns from that precinct as they ought to have done through the failure of the precinct inspector to count certain votes for both Mr. Carney and Mr. Smith? The same failure having occurred with reference to all candidates on the State ticket, that where the ticket was voted straight and through some apprehension, whether rightfully or wrongfully assumed, that they had no right to count those votes, as I understand it. Is not that the precinct in which the returns from the precinct by the election officials showed that both contestant and contestee had received a far less number of votes than it was reasonable to have supposed they should have received?

Mr. CARNEY. Yes.

Mr. FRENCH. And that then the only effect of the correction of the vote by the board of county canvassers was to add to each side the votes that were cast for both contestant and contestee as straight votes?

Mr. SHIELDS. No.

Mr. CARNEY. No.

Mr. SHIELDS. They added what they got from that paper, and that paper was not in the box, nor was any the first time, and where it came from or whether correctly prepared.

Mr. FRENCH. You asked that the entire precinct be thrown out?

Mr. CARNEY. Oh, no.

Mr. FRENCH. Or the difference between the original returns and these returns?

Mr. CARNEY. That is all. We claim that that original return stands until this committee finds out the facts. You can not get the facts from such conduct as that went through down there.

Mr. FRENCH. Let us go a little beyond that, then. Do you believe, assuming we will be able to get these facts, that those votes could be counted for contestant and contestee that were voted on a straight ballot?

The CHAIRMAN. As there is a call for a vote of the House we will have to interrupt the hearing now and adjourn until to-morrow at 10 o'clock a. m.

(Whereupon, at 12.15 o'clock p. m., the committee stood adjourned until to-morrow, Saturday, December 6, 1913, at 10 o'clock a. m.)

COMMITTEE ON ELECTIONS No. 1,
HOUSE OF REPRESENTATIVES,
Saturday, December 6, 1913.

The committee met at 10.10 o'clock a. m., Hon. James D. Post (chairman), presiding. Present: Messrs. Stephens, McClellan, Borchers, Elder, French, and Frear, members of the committee; Hon. J. M. C. Smith, Mr. Claude S. Carney, and Mr. Edmund C. Shields.

The CHAIRMAN. Mr. Shields, you may proceed.

**STATEMENT OF EDMUND C. SHIELDS, ATTORNEY FOR
CONTESTANT.**

Mr. SHIELDS. Mr. Chairman and gentlemen, I am not going to take up a great deal of time; not as much as yesterday, I hope, because we pretty well covered the ground yesterday. I believe that when we stopped we were still discussing the ward in Battle Creek, and the condition of affairs there that grew up after the election, covering the change that was made in the returns. We are not quarreling with the original returns as made. Our criticism of that ward is based upon the fact that afterwards the box of returns was called in from the precinct and brought before the board of county

canvassers, and, as you will recall, the first time there was a meeting no paper was discovered in it except some ballots, and some figures on the outside of one of the roll of ballots which were taken into consideration to some extent.

Later on, and in the absence of Mr. Carney or any representative of his, and at the request of Mr. Smith, the box was again opened in the presence of the board. This time there was discovered in the box a paper about 8 or 10 inches square, purporting to be a tabulation of the returns from that precinct, and from that paper the change was made. One of the significant features of the situation in that district was that the board changed the returns at the request of Mr. Smith, whereas over in Eaton County, when Mr. Carney was seeking information and investigation to which he was entitled under the law, the board over there absolutely refused to pay any attention to him. I want to read a short extract from the record, showing the condition of the ballot box in this questioned ward of Battle Creek at the time this paper was found in there, which was after the first meeting of the board when nobody had discovered such a paper in it. I read from the middle of page 451:

"Q. Are you able to say it is in the same condition now it was when you first saw it?—A. The general condition; do you mean as to being jammed?

"Q. Yes; as to being jammed, and so on.—A. I don't know anything about it; candidly, I don't know.

"Q. What is the appearance of this jam in the top, whether done with blows or how; what is the appearance of it?—A. The entire lid is crushed down; that one edge which was ridged is bent down; I should say it was by means of blows, if my opinion is worth anything; it could be done in various ways, probably.

"Q. With the box in the condition it is now in, would you say the lid could be raised without disturbing the seal in front?—A. That lid could be raised about one-half an inch, taking out the slack.

"Q. I mean raised up so you could get inside the box?—A. No, sir; not without disturbing the seal.

"Q. How is the lid fastened down?—A. There is a staple from which there is a loop, a steel loop or hasp, and through this padlock and from that padlock a leather strip tied with a string to the box and sealed.

"Q. I will ask you if in your opinion it would be possible to open that box and empty the rolls of ballots you saw in the box without destroying the seal in front?—A. No, sir; that would not be possible.

"Recross-examination by Mr. ADAMS:

"Q. These figures that you state one of the inspectors used the second time when the ballot box was before the board of county canvassers were the figures that were on the sheet of paper?—A. Yes, sir.

"Q. A single sheet of paper?—A. Yes, sir; a single sheet.

"Q. Such a sheet of paper as that was on which those figures were, which sheet of paper and the figures on it were used in making some changes of these election returns, could be put into the ballot box this minute without unlocking it or breaking the seal, could it not?—A. I don't know; I think so; I think it could be, but it would show some evidence of being put in, I think."

Mr. Carney calls my attention to the fact that this witness Hart, from whose testimony I have just read, was the county clerk and was called by the contestee. I read from the redirect examination by Mr. Maynard, Mr. Smith's attorney, and the recross-examination by Mr. Adams, Mr. Carney's attorney. That shows the condition of the box and not only what they were willing to do but what they did do along the line of strengthening the showing of results for Mr. Smith. Now, I think that covers the specific precincts that have been taken up by us in our briefs.

There is another class of precincts which we have covered in our original brief merely by grouping them as those precincts where voters were instructed and not sworn before they were instructed.

Mr. FRENCH. Do you challenge the returns that were originally given in that particular precinct?

Mr. SHIELDS. No, sir; we do not.

Mr. FRENCH. For instance, in the original returns Mr. Smith received 31 votes and Mr. Carney received 23 votes.

Mr. SHIELDS. Yes, sir; that is correct.

Mr. FRENCH. You do not challenge that at all?

Mr. SHIELDS. No, sir.

Mr. FRENCH. You take the position that you simply do not know anything with respect to the added votes; that the paper from which the records were taken should not be the basis, at least, for the official records? Do I understand that that is your position?

Mr. SHIELDS. Yes, sir; that the paper is not a paper required by law; that if it was an honest memorandum it was there at the time when it should have been there, but must have come in at some later time, and coming in that way, without any authority and without any authentication of any kind, it is not a proper basis upon which any change can be made. I will go a step further. We do not question the right of this committee or the right of the House to get the true returns from the box.

Mr. FRENCH. Is the box preserved?

Mr. SHIELDS. I do not know. I suppose so. Mr. Smith or Mr. Carney would know more about that than I would.

Mr. CARNEY. I have seen nothing of that particular box.

Mr. FRENCH. But you do not raise any question affecting that which may be in the box, assuming that the committee will be about to get it?

Mr. CARNEY. No, sir; but the last examination shows it has been tampered with.

Mr. FRENCH. Tampered with to such an extent that a package of ballots could have been put in?

Mr. CARNEY. No, sir.

Mr. SHIELDS. We do not say that.

Mr. CARNEY. An examination will disclose the fact that it would be impossible to say one way or the other, without opening the box, from its peculiar condition, to what extent it has been tampered with. The record will show you that it was not sealed, as required by statute, at any time after the election. Of course there was a string around it and a seal on the string, but the slot was not sealed at all. Do you understand?

Mr. FRENCH. Yes, sir.

Mr. CARNEY. Our statute requires that a strip of canvas shall be put over the box, but they did not do that in this instance, but merely put a string around it—I believe it was a shoestring, was it not, Mr. Smith?

Mr. SMITH. I can tell you this—I do not think the record shows it: The janitor opened the box up there at the city hall for another purpose, and some trunks fell on it, and it was broken in.

The CHAIRMAN. Does the record show that?

Mr. SMITH. No, sir.

Mr. CARNEY. That is the first I have heard of it.

Mr. SMITH. It is known there and it is an actual fact, if you want to know it, and the testimony can show it, that a box or chest fell down on the ballot box during the time it was stored in the courthouse at Battle Creek, long after they made the second count. I spoke to people very carefully about it, and I can say that nobody was responsible for the board coming there the first time. They honestly came and made their calculations. The chairman of the board was the strongest Democrat in the county and a partisan of the contestant. He signed the returns without anybody being there at all, and the next day Mr. Carney went down there to explain the law to him, saying that they had exceeded their authority, and they sent me word that they would like to have me come over, so I went over to the chairman, accompanied by Mr. Huggett, a gentleman who had formerly been associated with me. They had questioned the proceedings, and I said: "Send for the box again, then." So when the box came in again it was just exactly the same as it had been a few days before.

Mr. CARNEY. How do you know that?

Mr. SMITH. The record shows that. Now, I claim a different construction of the election law from theirs—

Mr. FRENCH. I think it would be better to take that up after they have finished their side.

Mr. SMITH. Very well.

Mr. STEPHENS. The law requires that one tally sheet be put in the box and one sent to the judge of probate?

Mr. SHIELDS. And one to the county clerk.

Mr. STEPHENS. It was claimed that there was no tally sheet in this box.

Mr. SHIELDS. The record shows that there was no tally sheet found there.

Mr. STEPHENS. Was a tally sheet sent to the county clerk? If so, what does the record show as to the number of votes cast for the two candidates?

Mr. CARNEY. Every tally sheet shows exactly the same figures as the original returns, Smith 31 and Carney 23; every record shows that; they are just the same all around, the one filed with the judge of the probate court and the one filed with the county clerk.

Mr. FRENCH. Is there some record equally extensive which would show something in regard to this bundle of ballots marked "Straight" that were ignored?

Mr. CARNEY. No, sir.

Mr. STEPHENS. From whose testimony do we get that?

Mr. CARNEY. Mr. Schneider's testimony shows all that.

Mr. STEPHENS. He was a witness for yourself?

Mr. CARNEY. Well, it may have been the testimony of the county clerk or deputy county clerk, I am not sure which, but I think it was Schneider's testimony.

Mr. STEPHENS. Well, never mind; I do not want to take up the time to find it now.

The CHAIRMAN. Now, the original tally shows that Mr. Smith received 31 votes and Mr. Carney received 23 votes. Then the county clerk, Mr. Hart, changed that by adding 66 votes to Mr. Smith's tally, giving Mr. Smith 97 votes, and adding 38 votes to Mr. Carney's tally, giving him a total of 61 votes. After these additions were made, how did those figures tally with the vote for other candidates who were voted on at the same time?

Mr. CARNEY. You do not seem to understand. The other candidates were in the same condition all the way through. It ran about the same all the way through, showing 54 or 55 votes cast for everybody. There was practically no difference.

The CHAIRMAN. What did the poll book show as to the number of votes cast in that precinct?

Mr. SMITH. The testimony shows that there were 374.

Mr. STEPHENS. Not in that precinct, surely, because the list of returns does not indicate it.

Mr. SMITH. You will find it on page 443 of the record. You asked for the whole number of votes cast in the precinct, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. SMITH. For all the candidates?

The CHAIRMAN. Yes.

Mr. SMITH. The record shows there were 374.

Mr. ELDER. Were there more than two candidates?

Mr. SHIELDS. Oh, yes; there were other candidates there.

Mr. STEPHENS. I find on page 135 in the course of the testimony of Mr. Schneider the following answer:

"A. Well, when we received the box from the county clerk, he advised us that the number of votes returned were less than the number cast at the election."

Mr. SMITH. Yes.

Mr. STEPHENS (continuing):

"And after looking the report of the election board over and comparing it with the poll list, we also knew that there must have been more votes cast than was returned."

Mr. SMITH. That is right.

Mr. ELDER. Did they count those votes again?

Mr. CARNEY. No, sir; they did not count anything. That was the real objection to the proceeding.

Mr. STEPHENS. Did they just arbitrarily add so many votes to your list and so many votes to Mr. Smith's list?

Mr. CARNEY. Yes, sir.

Mr. FRENCH. As I understand it, they added them to this memorandum which you challenge?

Mr. CARNEY. Yes, sir.

Mr. FRENCH. That is the fact, Mr. Stephens.

Mr. STEPHENS. All right.

Mr. CARNEY. I contended that they should have waited until there was a hearing of this contest. There is no provision in our State for a recount of votes cast in a congressional election. Our supreme court has settled that question clearly. I took the position then that I was bound to wait until the matter came before Congress when all parties could be heard, but they would not wait.

Mr. ELDER. Then these votes were counted when—the next day?

Mr. CARNEY. They never were counted again.

Mr. ELDER. Was this memorandum signed by the election officers?

Mr. CARNEY. It was signed by nobody, and it was not in the box, so far as the testimony shows, the next day—or rather, the next week—after election when they opened the box; they simply took some figures from the backs of the ballots which they found there and which was absolutely prohibited by law. Afterwards they found this piece of paper in there, and that is the suspicious thing about it. After this thing was thrashed out and there was no tally book there and they could not supply it, then they found this piece of paper.

Mr. STEPHENS. It seems from the testimony of Mr. Schneider that they put the Democratic votes together, rolled them up?

Mr. CARNEY. Yes, sir.

Mr. STEPHENS. And then marked them "Straight D."?

Mr. CARNEY. Yes, sir.

Mr. STEPHENS. Which meant "straight Democratic ticket"?

Mr. CARNEY. Yes, sir.

Mr. STEPHENS. And then they marked the others "Straight R." for "Straight Republican" and "Straight N. P." for "Straight National Progressive"?

Mr. CARNEY. Yes, sir.

Mr. STEPHENS. And there was one bulletin endorsed: "Total split votes"?

Mr. CARNEY. Yes, sir.

Mr. STEPHENS. So that it would appear from this record that the election officials later added the straight Republican vote to the split vote, giving Mr. Smith 97 votes?

Mr. CARNEY. Yes, sir. Of course, those were more or less minutes or rough memoranda on the back of the ballots.

Mr. STEPHENS. Are those ballots here?

Mr. CARNEY. I do not know where they are. Ask Mr. Smith.

The CHAIRMAN. Why did you not attach them to your depositions?

Mr. SMITH. They would not open the box; they objected to it.

Mr. CARNEY. We objected to the condition the box was in.

The CHAIRMAN. You could have attached the box, ballots, and all, and brought them here.

Mr. SMITH. They would not allow us to open the box. At every point we were strenuously opposed. At every step, when we undertook to have the matter fully explained, we were met with vigorous opposition. The record discloses that. I brought in every man in every precinct who could throw light on the case, and they told everything they did.

Mr. SHIELDS. Mr. French, did you want to ask a question?

Mr. FRENCH. The question I was about to ask has been answered in the course of the several questions preceding, and I do not care to pursue that line any further.

Mr. SHIELDS. To be perfectly fair and square about that situation it came about in this way: There were some marks on the backs of some rolled ballots. It was then discovered that they had no right under the law to take any ballots from the box; they could not open the ballots; they could not refer to the ballots in anyway. There was no other paper there at that time seen by anybody. The second time they went there a paper which the law permitted them to take out was found in the box. Now, when it got there and how it got there the record is absolutely silent. It does not show when it was put in there or who put it in there.

Mr. SMITH. Yes, it does. It shows that the man who made it swore that he put it in there that night.

Mr. CARNEY. And he said it was 3 by 4 feet in size.

Mr. SHIELDS. That was to show that there was some foundation for the change, but that is not the paper that he described as having made when he was on the election board; that did not agree with the other paper.

Mr. SMITH. There were two different papers.

The CHAIRMAN. Well, coming back to the point, you do not claim that the result which was finally canvassed is materially different from what it should be?

Mr. SMITH. No, sir; I do not claim that because I can not find out by any legal method what the vote was. I do not want to be put in the position of claiming something for which I have no foundation, because I have no legal way of finding out what the exact vote was at that time. I do not want to be ridiculous; that is all.

Mr. FRENCH. I want to ask you if the county clerk or the canvassing board made the same change with respect to the other candidates where they observed that the votes which had been cast on straight tickets had not been counted. Did they make the same change with respect to those totals?

Mr. CARNEY. Yes, sir; they did, and the reason for that was that Mr. Smith asked them to make the change in his votes.

Mr. SMITH. I never asked them to make a change, and the record shows it. I spent \$980 for the expense of taking a voluminous record of testimony in that fraud case. I brought in every man I could get hold of to testify; I had the whole election board there and they never put a single witness on the stand to contradict a word of testimony offered in my behalf.

Mr. FRENCH. Then, right in that same connection-----

Mr. CARNEY (interposing). Mr. Smith has probably forgotten the facts or he would not make the statement that he now makes.

Mr. FRENCH. I want to ask you or Mr. Shields how the total vote for Congressman compares with the total vote received by the other candidates, both on the Democratic and on the Republican tickets?

Mr. CARNEY. They made exactly the same addition to every one.

Mr. FRENCH. They made an addition to every straight ticket?

Mr. CARNEY. Yes, sir; but everybody understood at that time that they made absolutely no change except in this office.

Mr. FRENCH. Was there any recount had on the other offices?

Mr. CARNEY. No, sir.

Mr. FRENCH. The State has not made any recount?

Mr. CARNEY. No, sir; this was the bone of contention all the time.

Mr. SHIELDS. Under the law of Michigan, in the condition in which that ballot box was, you could not have a recount, no matter what was done or what happened. A box that has been tampered with must be thrown out.

The CHAIRMAN. Mr. Shields, from the fact that the same mistake was made as to all the candidates, presidential electors, State and county officers and all alike, Democrats, Republicans, and Socialists, is it not apparent to you that it was a mere oversight on the part of the election officials?

Mr. SHIELDS. It might have been and it might not.

The CHAIRMAN. Is it not apparent to you—

Mr. SHIELDS (interposing). I do not know anything about it. I am not going to say whether it is or not, but it seems to me that nobody is warranted in taking a lump number of votes and adding them to everybody equally without any legal foundation or justification for doing it.

The CHAIRMAN. The point I am making is this: You do not accuse the election officials of fraud, do you? It could only be a mere oversight?

Mr. CARNEY. Oh, yes, sir; that is correct. In this count, you mean?

The CHAIRMAN. Yes, sir.

Mr. CARNEY. No, sir; certainly not.

Mr. SHIELDS. Not at all.

Mr. CARNEY. It is the conduct in raising the vote that is irregular.

Mr. SHIELDS. Now, I will take up the other division of the case. In the contestee's brief there are a large number of precincts in which the contestee claims that the votes were illegal because one or both of two conditions existed: First, that certain voters were assisted in voting and had their ballots marked without the voter being sworn, and second, because women watchers or challengers were behind the railing. As to the first proposition, the law of Michigan provides that if a person is blind or otherwise unable to mark his ballot, unless the defect is apparent to the board the voter must be sworn as to his incapacity before he is allowed assistance. They claim that those two conditions invalidate the returns from a large number of precincts and they should be thrown out entirely. I want to discuss for just a moment the question of the women watchers being behind the railing. That is covered in our reply brief by a specific law of 1912, passed by the State legislature. Our State at that time was in the throes of a woman's suffrage movement, and at this same election the question of woman suffrage was being voted on. For the purpose of protecting the rights of the woman suffragists and giving them an opportunity of seeing, hearing, and knowing what was being done, the legislature passed a special act giving the women the right to have two watchers inside the rail.

The CHAIRMAN. Do they contend that there were more women allowed within the railing than were allowed by law?

Mr. SHIELDS. Well, I do not think that proposition is contended for so much as the proposition that they did not have the proper credentials.

Mr. CARNEY. I do not know whether they rely upon this or not, but under the old statute nobody but representatives of a political party had a right to challenge, and when the women first laid claim to the right nobody seemed to know about the new statute, which gives the right of challenge to any order of citizens interested in the question to be voted upon, whether they are members of a particular party or not.

Mr. SHIELDS. I think none of them were aware of the act passed at the special session enlarging the right of different bodies or parties at interest to have special watchers at the polls.

The other question calls into consideration the construction by the Michigan Supreme Court of the laws governing elections in that State, particularly that section of the law in regard to assisting voters who are blind or otherwise incapacitated from voting unassisted. Now, there is really no difference between us on the law. There are a large number of precincts which they ask to have thrown out, as against the contestant, in their brief. They begin on page 32, there being several to a page, and run through a number of pages in their brief. We contend the rule to be that if those individual ballots are illegal they should be counted out and cast off.

The CHAIRMAN. Your contention, if I understand you correctly, is not any different in that respect from where you make the same point against them?

Mr. SHIELDS. No, sir; we do not make the same point exactly.

Mr. CARNEY. Yes; we do.

Mr. SHIELDS. You mean the same as we do in the other precincts?

The CHAIRMAN. Yes, sir.

Mr. SHIELDS. No; there is a different rule there.

The CHAIRMAN. Do you contend that where they did not swear a voter as to his incapacity it was a fraud which you could not segregate from the whole vote?

Mr. SHIELDS. We did not raise the question of swearing a voter—

Mr. CARNEY. Mr. Shields, may I interrupt you right there?

Mr. SHIELDS. Yes, sir.

Mr. CARNEY. I think there were four or five precincts where this identical question came up on our side of the case where there was no claim of fraud, the only contention being that certain voters were not sworn, and we took the same position that is taken in the brief here. Those votes have not been tabulated on our side of the case because they did not amount to very many.

The CHAIRMAN. Your contention, Mr. Carney, is that it vitiates the whole number of votes?

Mr. CARNEY. Mr. Shields is about to cover that point, sir.

The CHAIRMAN. Go ahead, Mr. Shields.

Mr. SHIELDS. I do not know just what your inquiry was directed to, Mr. Chairman, but we know this same condition existed as to but a few voters being sworn. However, we have not raised that question nor have we used it as an argument to substantiate the claim that the whole precinct should be thrown out. That question is not raised in our brief. In other words, while there were one or two instances in some of those precincts where voters were assisted without being sworn as to their incapacity, there were other questions reaching to the fundamentals of the proposition upon which we rest our case, therefore we made no point about that.

Mr. ELDER. Do you charge in your petition that that would invalidate the election?

Mr. SHIELDS. I think not.

Mr. CARNEY. No, sir.

Mr. ELDER. I should think that if you charged that against them and admitted it on your own side they could come back at you and put you in a hole as to the legality of the other ballots.

Mr. SHIELDS. Not at all. I have had some experience in drawing up petitions, and I know that if you state certain facts and draw certain conclusions therefrom you may not have analyzed the facts sufficiently nor drawn a legal conclusion, but certainly no lawyer would say that a petitioner or litigant is bound by a statement of facts which is correct but from which he drew an improper legal conclusion. A law is a law and can be applied to any true state of facts. Now, there are a large number of districts in which the contestee claims that the entire vote should be thrown out because some few of the voters in those precincts were assisted without being sworn. We say that that is not the rule. That is set forth in their brief.

Mr. FREAR. At what page?

Mr. SHIELDS. At page 16, brief for contestee. Our contention is that the rule, as settled by the courts of Michigan, is that if a ballot is vitiated it can not be counted; in other words, if it is known for whom a vitiated ballot is cast, that individual ballot should be deducted from the tally of that candidate. On the other hand, if it is not known for whom that vitiated ballot was cast, then that ballot and all ballots of that nature must be deducted proportionately from all the candidates. That is the specific rule laid down in Michigan, and the counsel for contestee does not disagree with us. On page 16 of their brief they refer to a case in 99 Michigan which we have thoroughly covered in our brief [reading]:

"The case of Attorney General v. May (99 Mich., 538) holds no more than that it is unlawful for an inspector of an election to assist in marking a ballot for any elector who claims to be unable to read English until such elector shall have first made oath to the fact; it further holds that this requirement is mandatory, and votes in violation thereof should not be counted. In our opinion there is no necessity in dwelling upon the law laid down in this case. It simply addresses its reasoning and argument to the proposition that where votes are illegally cast they should not be counted and should be withdrawn from the count if it can be ascertained how many were thus illegally cast."

Now, in their application of that rule to a number of precincts they say that there were a number of votes illegally cast, and therefore the whole precinct should be thrown out and voided. We have analyzed the record and taken the maximum number of those votes from every precinct in the record—

The CHAIRMAN (interposing). What is the maximum number?

Mr. SHIELDS. Forty-two. We have gone through the record and analyzed it and taken from the testimony the maximum number testified to by any witness on their side in any precinct in the district, and we say and agree with them that they should

be withdrawn. In a moment I will show you the law of Michigan on that proposition. We do not say that they should be withdrawn and taken out proportionately from the votes of each candidate. We do not ask that here. We ask this, that they be cast out and deducted from Mr. Carney's vote. We say take them all from Carney. If the law of Michigan says you shall take the entire 42, the maximum number shown by this record in any district, then we say take them entirely from Carney.

Mr. FRENCH. What do you mean by taking them proportionately?

Mr. SHIELDS. The Supreme Court of Michigan has so ruled.

The CHAIRMAN. You mean you can take half from Carney and half from Smith?

Mr. SHIELDS. Yes, sir.

Mr. FRENCH. As a matter of fact, it would not affect the vote at all, would it?

Mr. SHIELDS. No, sir. If it was just one precinct, the proportion would remain the same; but the proportion differing in the other precincts might make a change in the result from the district as a whole, though it would not make a big difference. I understand the rule to be that if there were nine votes of that kind in the precinct, and if the Republican candidate received three-fourths of the vote and the Democrat one-fourth of the vote in that precinct, three-fourths of the nine would be taken from the Republican and one-fourth from the Democrat.

Mr. ELDER. Yes; if you could divide it that way.

Mr. SHIELDS. The method of arriving at that determination is a mathematical calculation based upon the theory of chance. If there are three-fourths of one kind of ballots in a ballot box and one-fourth of another kind in the same box, and you draw out nine ballots promiscuously after stirring them around, on the rule of chance you will draw three-fourths from the majority and one-fourth from the minority ballots. It can not be mathematically accurate, but it is based on the probabilities that the proportion will be maintained in the manner of drawing.

Mr. STEPHENS. What is the objection to these 42 ballots?

Mr. SHIELDS. I will give you a concrete illustration: Suppose a blind man on election day enters the polling place and, unable to mark his ballot, says, "I need some help." Unless the defect is apparent to the board, he should first be compelled to swear that he needs help. If he is granted assistance, one inspector goes with him to the booth and marks his ballot for him. The object of that is to prevent the identification of ballots.

Mr. FRENCH. As a matter of fact, it is left largely in the discretion of the board as to whether a man is apparently in need of help?

Mr. SHIELDS. I think there is quite a discretion there. The language of the statute is quite specific as to the necessity of his being sworn, but it contains a general clause. I think you are reasonably correct; there is quite a discretion. Of course, blindness is apparent, but supposing a man comes up and can not read English and is dumb, that board can not tell what defect that man has; so they put him under oath as to the necessity of assistance. It is difficult for the board to determine whether he shall be sworn, whether the defect is so apparent that it does not need to have his oath to convince them that they should help him. Is that clear?

Mr. FRENCH. Yes; but then the matter goes right back to the question of discretion with officials of that kind. Would not the Congress be bound to respect their judgment as to whether or not it was necessary that the man should be sworn?

Mr. CARNEY. I can enlighten you as to the testimony on that point. In some instances the boards testified that they did not notice anything wrong about the man, but that he asked for assistance and they gave it to him, not being familiar with the law. In other instances they said the man could not see.

Mr. FRENCH. But as a matter of fact there is a great deal of discretion?

Mr. CARNEY. Yes, sir.

The CHAIRMAN. And in order for you to have properly availed yourself of the point should you not have shown by the record that the boards violated their discretion?

Mr. CARNEY. Absolutely.

Mr. SHIELDS. The way we have handled it is to take the rule of Michigan as the court has laid it down and apply it in its most unfavorable aspect. We have no objection to the committee considering that it was entirely a matter of discretion with the boards. Of course, if the committee adopts Mr. French's position, then those ballots would become immaterial, and the result in all precincts would be as taken from the final returns, and no change would be made in the returns in that respect, and we would accept that. But we say that if the committee finds from an examination of the election laws of Michigan that something should be done with this precinct, that some change should be made, then the change to be made is to take those votes, when the number is known, proportionately from each candidate, which, of course, can not be done without definite information. Now, rather than bother you with that operation we say take the maximum number of votes that any witness has testi-

fied, on either side, were illegally cast, and take them all from Carney. So we certainly are fair on that proposition.

Mr. SMITH. Much obliged for small favors.

Mr. SHIELDS. I think we all understand that whatever we are entitled to we are thankful for, whether they come by gift or otherwise. I might say that we have not had much given us by grace in this matter since the primary last year.

I do not know how many of you are lawyers, but I know you are all able to read a plain decision of a court and understand what is set up in it. I wish to read just a statement or two from the case of Attorney General *v. May* (99 Mich., 555), which is a long case and is not quoted in full here. If some of you lawyers care to read it, you will find it a very interesting study. The decision was rendered by the Supreme Court of Michigan. I read from page 5 of the contestant's reply brief:

"We now come to the other portion of the charge, where, in substance, the jury were directed that they should take the illegal votes from the total vote proportionately, according to the entire vote returned for each candidate in that district."

Perhaps this quotation is not sufficiently illuminating, for the reason that it does not state that they were talking about sworn votes. In the same case, above this quotation, they say:

"In the present case the inspectors and other officers of the various districts are not charged with active frauds, but were marking ballots of those who claimed they could not read English, without their first having made oath as to that fact. This may have arisen from the interpretation of the statute now claimed by respondent's counsel; that is, that such provisions are not mandatory, but directory merely. And, again, it appears that proofs were obtainable and actually introduced as to the actual number of electors whose ballots were so marked."

We have that in this case, 42 being the maximum number. Continuing, the court said:

"This would not, under the facts shown, necessarily taint the vote of the whole district, and it would not taint the whole ballot if the jury were able to determine the correct ballot, as under such circumstances it would not destroy the presumption of the correctness of the other ballots cast."

The supreme court then continues:

"We now come to the other portion of the charge, where, in substance, the jury were directed that they should take the illegal votes from the total vote proportionately, according to the entire vote returned for each candidate in that district. In this we think the court, under well-settled rules, was entirely correct. It is a fair way to arrive at results. The rule is based upon the proposition that the illegal votes have gone into the boxes without the fault of either candidate. If these illegal votes can be separated from the legal ones, so that the number is substantially ascertained, then the poll is too large by exactly that number, and they must be cast out. In casting them out the rule laid down by the court below is sustained by McCrary on Elections (3d ed.), section 460, where it is said:

"Of course in the application of this rule such illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each."

"In American and English Encyclopedia of Law, page 353, it is said:

"Where more ballots are found in the ballot box than there are names on the poll list, the statutes of many of the States require the officers of election to draw out enough ballots without seeing them to make the number equal to that of the voters; and where they have not done this it is probable that no other mode would be preferable to that of deducting from each candidate a number of votes proportionate to his total vote compared with the aggregate vote of the precinct;" and the following cases are cited: *Gibbons v. Sheppard* (2 Brewst., 128), *Finley v. Walls* (4 Cong. Elect. Cas., 367), *Platt v. Goode* (id., 650).

"Our statute (sec. 174, How. Stat.) provides:

"If the ballots in the box shall be found to exceed in number the whole number of names of electors on the poll lists, they shall be replaced in the box and one of the inspectors shall publicly draw out and destroy so many ballots therefrom, unopened, as shall be equal to such excess."

Mr. Justice Cooley, in speaking of this provision of the statute in *People v. Cicotte* (16 Mich., 323), says:

This is all in the language of the Supreme Court of Michigan, gentlemen. I think what I am about to read will answer your question, Mr. French, as to the method of apportionment. The court quotes from Mr. Justice Cooley as follows:

"As each ballot is usually one of a number designed to be allowed to particular candidates and counted against others given to other candidates, the drawing may still work no injustice, since each candidate will probably lose by it a number pro-

portioned to the relative number of ballots appearing for him in the box, and thus the relative proportions will be preserved.

"This rule," he says, "is based upon the doctrine of probabilities. While we have no statute directing the mode of apportionment laid down by the court below, yet the rule, we think, is one which does no injustice to either candidate and in the end carries into effect, as nearly as may be, the will of the people as expressed at the polls."

Our reply brief goes on to say:

"Applying the above rule as laid down by the Supreme Court of Michigan to this case, we find that the number of votes cast in each precinct contested by the contestee, voted by voters who were assisted in having their ballots marked, but were not sworn, should not be counted. It so happens that the record is specific as to the number of votes in each of those precincts, so that the rule to be followed in each of those precincts is that that number of illegal votes should be deducted proportionately from the vote for each candidate. That this is the correct rule is conclusively shown by the following quotation from brief of contestee, top paragraph, page 16."

Which I have already read. Now, that seems to us to be, beyond any question, the situation of those votes. The precincts and the number of the votes are tabulated at the bottom of page 6, running over to page 7 of our reply brief, giving the maximum numbers. We are not favored by the other side with any tabulation, but it seems to us that the question as to those assisted voters is covered, from our viewpoint, very thoroughly by the Supreme Court of Michigan and by the record in the case. So there can be no possibility of our being here without a fair rule based upon the statute and upon the decisions of the supreme court of our State.

Now, gentlemen, in conclusion, it seems to me that the situation of this matter is just as I stated in the beginning. We have election laws in the State of Michigan. They are there for the purpose of protecting the secrecy of the ballot, the integrity of the ballot, of giving to every man in every community the right to express his opinion as to candidates for office, freely and untrammelled. We have come from the old-fashioned voting schemes, where we scrapped before the polls and stuck a ballot into a man's fingers and knew who he was going to vote for, down to the day of the Australian ballot, which, with all its safeguards, is but a cumbersome machinery at best.

We have had a number of election laws, all based upon the proposition that every man is entitled to a free election wherein he may register his individual will secretly and honestly. Now, in construing the present law the supreme court of our State has spoken with absolute finality on every proposition which we have submitted to you. We have not come here to burden this committee or the House with a great long brief or a long analysis of this record. We have not taken up little things which we thought were unimportant and magnified them. We have not gone from precinct to precinct and presented some particular matter just because it was there. We have taken out of this contest every precinct upon the facts of which our supreme court has spoken point-blank. We have taken nothing else. We have presented nothing wherein the decision of the Supreme Court of Michigan has not been on all fours with our contention. We ask nothing else at your hands but what is justified by the laws of our State and borne out by the record in this case. We appreciate the fact that the House is the sole judge of the election and qualifications of its Members. You have the power, you have the authority, you can do as you please, and yet when one states that, he has not stated what the real power of the House is. The House may have all the power imaginable, but that power is always exercised by the House legally, fairly, and reasonably; it is necessarily the power to do a thing in a legal and proper manner, and it would seem to be impossible and incredible that the House would take a law of the State of Michigan, in the absence of a Federal statute and in the presence of the Constitution, and trample upon and override it.

Under the Constitution you adopt the Michigan election law as your guide, and for the purpose of this case it is as fairly and legally the law of this House as it is the law of Michigan. You apply it to this election as the people of Michigan have applied it to other elections in the State of Michigan. You will interpret it as the supreme court of our State has interpreted it, and when you have discovered the legal and proper method of procedure, then you have unbounded authority to act, and your precedents from time immemorial show that you have always been willing to keep within the bounds of legality and fairness in cases of this kind. You take the law of the State of Michigan as the law by which you say we shall conduct our elections, and you accept the interpretation placed upon that law by the only body which has a right to interpret it, namely, the Supreme Court of Michigan. We come before you with the exact rulings of that court. We are asking nothing trivial, nothing unfair. We come before you and make this statement, specifically and abso-

lutely, that in the townships of Sunfield and Winsor not a single legal vote was cast, and we give you the authority in our brief, showing you beyond any question that there is no other conclusion that can be reached than that every vote cast in those two precincts was an illegal vote, and that statement is backed up by the decisions of the highest tribunal in our State. And, Mr. Chairman, they quote, if you please, from something you quoted in the MacDonald case:

"There is nothing that will justify the striking out of an entire division but an inability to decipher the returns, or a showing that not a single legal vote was polled, or that no election was legally held."

Now, I want to make it plain, and I hope it will be presented to the House, that we are standing here simply and solely upon our laws and the interpretation put upon them by the Michigan Supreme Court. We have to abide by that interpretation, and is it fair for this House to inject into it something of which we can take no advantage? We are entitled to all the rights and privileges and protection of our laws. How are we going to say it is the law of Michigan if we can not get the benefit of it?

We are law-abiding citizens; we have good people up there; we have a big State, if you please, and we have as good a right to the privileges and pleasures of citizenship as any State in the Union. Everybody abides by the decisions of our courts, and every man acts according to them, lives under them, and yet the only proposition that is against us is covered 18 or 20 times in their brief, where they say, in effect: "We admit their decisions and their rights under the law, but the House of Representatives has a right to throw down, override, and destroy the laws of Michigan."

Mr. ELDER. Would you mind if I interrupt you for a moment?

Mr. SHIELDS. No; not a bit; glad of it.

Mr. ELDER. My idea is that while we should pay attention to the State laws, I do not think that if our interpretation of the laws differed from that of the State supreme court we would have to accept the interpretation of the court. I do not think we did it in the MacDonald case.

Mr. SHIELDS. You did follow the decision of the supreme court in that case.

Mr. ELDER. Of course, we did in a way. My belief was that those voters intended to vote for MacDonald and that we had a right, notwithstanding any law to the contrary, to count the votes for MacDonald, and we did that.

Mr. SHIELDS. But there was no Michigan law to the contrary.

Mr. ELDER. There was not?

Mr. SHIELDS. No, sir. The only way we came before the court was in a mandamus proceeding to make the State officers issue a certificate to MacDonald, and the State officers took the position that they had no right, in any shape or manner, to act; that they had no jurisdiction in congressional elections.

The CHAIRMAN. Did we not override the decision of your supreme court in the MacDonald case?

Mr. SHIELDS. No, sir.

The CHAIRMAN. Did we not do so in this respect, that under your decisions the name "Sheldon William J. MacDonald" could not be interpreted as "William J. MacDonald," and we so interpreted it? Did we not thereby override your decisions?

Mr. SHIELDS. Yes, sir; you did to that extent, but what were the merits of it? Read your own findings and the findings of this committee and you will find that they are based largely upon the fact that the Republican candidate withdrew, waived his defense, and expressed himself of the opinion that the ballots cast for "Sheldon William J. MacDonald" were intended to be cast for "William J. MacDonald." I think they were, myself. I think the decision was entirely correct and just.

The CHAIRMAN. But our decision was not in accordance with what your supreme court has always held.

Mr. SHIELDS. That is true; it was not. But you had before you a concededly legal election; there was not any attack made upon the election machinery or the election returns. You simply held in that case that you had a right to go back of a legal ballot and find out what was the real intent of the voter. I think you had a right to so hold; being a lawyer, of course, I do not always agree with the supreme court. Now, you had to concede that there was not any "Sheldon William J. MacDonald"——

The CHAIRMAN (interposing). Yes; and in doing that we overrode every decision of your supreme court on that subject, did we not?

Mr. SHIELDS. Yes; and I am glad you did.

The CHAIRMAN. And in doing that we had to go beyond the four corners of the ballot?

Mr. SHIELDS. Yes, sir; but that question was not before you; that had already been conceded.

The CHAIRMAN. What was conceded?

Mr. SHIELDS. It was conceded that every step was legal from the putting of the ballot into the box to the canvassing of the returns. You merely took the ballot to see what was the intent of the voter.

The CHAIRMAN. And that, as I say, was in the face of your court decisions.

Mr. SHIELDS. Necessarily, but everybody conceded that there was no man in that district by the name of "Sheldon William J. MacDonald."

Mr. FRENCH. But, Mr. Shields, twice in the operation of the machinery involved in carrying out that election, steps were taken which were not in accord with the decisions of your court, and we held contrary to the supreme court of the State.

Mr. SHIELDS. How was that?

Mr. FRENCH. The first was with respect to the nomination of the man on the Progressive ticket whose place MacDonald took.

Mr. SHIELDS. Yes, sir.

Mr. FRENCH. Second, as to the validity of the body which presumed to speak for that district when they named MacDonald. In those two instances the question was raised that it was contrary to the laws of the State of Michigan.

Mr. SHIELDS. Who raised that question?

Mr. FRENCH. The attorney who appeared here. He was originally employed by Mr. Young, and then appeared both in the interest of Mr. Young and, in a sense, in the interest of the people of that district as well.

Mr. SHIELDS. Did the people ever engage him to represent them up here?

Mr. FRENCH. No, sir.

Mr. SHIELDS. Well, I happen to know they did not.

Mr. FRENCH. But it all goes back to the original proposition, that you say we defer to the decisions of your supreme court, when as a matter of fact on three different occasions we took a position contrary to them.

Mr. SHIELDS. I think you did on one question.

Mr. FRENCH. On three questions.

Mr. SHIELDS. No, sir; not in the primaries.

Mr. CARNEY. I want to ask a question, and I ask largely for information. Of course, I have not a brief in the McDonald case, but is not this the condition that you found in that case: That the decisions that were referred to, with reference to the primaries, and the legality of the steps by which MacDonald's name finally got upon the final ballot, all grew out of cases that were tried before that election? Is it not true that our supreme court has not yet said that if a man's name is once placed upon the ballot, even though the machinery may have been irregular and illegal in placing it there, and the ballot placed in the hands of the voters and voted upon, that you can not go back into the preliminary steps?

Mr. FREAR. That question was not raised.

The CHAIRMAN. That is the ground we took.

Mr. CARNEY. I think if you will follow out that subject you will find that any voter has a right to write in the ballot any name he chooses. I do not think you would have gone contrary to any statute or decision in the State of Michigan. As a matter of fact, you will find some statutory authority for the thing you did do.

Mr. ELDER. I do not know that the views of the chairman and the rest of the committee coincided with the view I took in that case, but my idea was that the State had no right to put down qualifications as to who shall or shall not be candidates for Congress in addition to the constitutional provisions.

Mr. CARNEY. Our supreme court has assumed jurisdiction over questions between candidates for Congress in the primaries before election but it has absolutely refused to assume jurisdiction after election.

Mr. FRENCH. I recall one case that was cited to us wherein the decision of the court was rendered two days prior to election in a matter involving the probate judge who was nominated in the primaries. The decision was rendered at a time when the ballot could not be corrected by any party machinery other than by writing in the name of the new candidate.

Mr. BORCHERS. I trust that the members of the committee will remember that I myself and at least one or two others took the position that on account of the action of Mr. Young in the other case, giving the notice to the people as he did, and the statement which he signed in which he authorized the different boards to put on the name of Mr. MacDonald, and in which he said, "Let the people rule," he was somewhat estopped from denying the rights of Mr. MacDonald. Since the statement has been made here that we took positions contrary to Michigan Supreme Court decisions I want this statement to go on record.

The CHAIRMAN. What bothers me in this case—and it is in the face of your supreme court decisions—is this: Take Sunfield Township. According to your supreme court

the whole poll should be thrown out, but it does seem to me that the evidence shows that we can segregate the illegal votes.

Mr. SHIELDS. I do not think you can.

The CHAIRMAN. Well, I think you can in each of these townships, under this record. Now, measuring your case by the yard stick of the chancellor, do you really think that we ought to disfranchise the great bulk of voters in a precinct just because a few illegal votes have been cast?

Mr. SHIELDS. Absolutely so, if they can not be segregated.

The CHAIRMAN. If they can not be segregated, yes; I agree with you on that.

Mr. SHIELDS. But that would mean that this House says to the people of Michigan: "Never mind your State laws and the decisions of your supreme court. You just get things in shape so that it looks as if men cast these ballots properly and it is all right." We have no protection from you up in Michigan; our protection comes from our own State laws and supreme court decisions, and yet you tell us: "We will not follow your laws in congressional elections." If the door is that wide open, I do not know what the final result will be. I know that for years past our legislature has been trying to make elections more pure and honest, the polls have received greater protection, and everything is being done to keep elections pure and clean. I know that our supreme court has said in the Kirby case and the Rinehart case, and in every similar case which has come before it, "Gentlemen of the State of Michigan, here is an election law. It is your business to obey it." Now, this House and this committee can say to Michigan, "You can have your laws and do as you please as to local affairs, but your laws are not precedent; your laws will not be followed in congressional elections," and you have that right. We are here to-day fairly, squarely, and legally, as citizens of Michigan, standing upon the laws of Michigan and asking that we be allowed the protection given us by those laws. Under those laws the returns from the townships of Sunfield and Winsor are illegal. In those two places the election was absolutely illegal. Not a single legal ballot was cast in either township, measuring the ballots by the decisions of our supreme court. If you attempt to override our laws you may do so, but just stop and think what you will do to the people of Michigan. Would you like that kind of a rule shoved into your own State? If you take that view of it, then Congress had better pass a general election law for Members of Congress. There is no escape from it; you will either accept the laws of Michigan or ignore them.

Mr. ELDER. What is the general total left if you take out those two townships?

Mr. SHIELDS. In Sunfield Township Smith received 174 and Carney 104 votes; if all the votes are thrown out, it will give Carney a gain in the total amounting to 70 votes. In Winsor Township Smith received 174 and Carney 92, indicating a gain of 82 for Carney, and a gain from both townships of 152.

Mr. CARNEY. What about Carmel Township?

Mr. SHIELDS. I have not come to Carmel yet. Now, I want to state again, at the risk of being a bore, that we place the townships of Sunfield and Windsor squarely before this committee and say that the vote in those townships was illegal and the entire vote must be thrown out, if you are going to follow the statutes of Michigan and the decisions of our supreme court.

Mr. FREAR. And accept the testimony of your single witness on that point?

Mr. SHIELDS. Oh, no.

Mr. FREAR. Only one witness testified that they were vitiated.

Mr. SHIELDS. That is not the point.

Mr. FREAR. The testimony of two witnesses was that the man inquired of them the name of the party for whom they wished to vote. Is that it?

Mr. SHIELDS. Oh, no; that is not the same precinct.

Mr. FREAR. Then I beg your pardon for interrupting.

Mr. SHIELDS. There is a misunderstanding. The township of Sunfield is where they appointed an instructor not a member of the board and not an election official of any kind, and he gave out every ballot given out that day. In the case of McCall v. Kirby it was held that under such conditions the ballots must be thrown out.

Now, I come to the township of Winsor. In that place not a single ballot had the initials on it.

Mr. FREAR. In the right place?

Mr. SHIELDS. Not at all.

The CHAIRMAN. They were placed there, though, were they not?

Mr. SHIELDS. Yes; before they went into the ballot box, but no ballot with an initial on it went into the ballot box, and the statute is specific that such ballots are void and shall be cast out. That is covered point-blank by the Anderson case, which is absolutely a parallel case, on all fours with this branch of the case. Let us take up the township of Carmel, where they let in two men who were not members of

the board. If that case ever came before our supreme court, they would absolutely hold it to be far more in violation of the law than the conditions in Sunfield and Winsor Townships.

It seems to be, following any of the decisions which you have read, or any of the election laws, that in the township of Carmel there was the most direct violation of the rights of the individual voter.

The CHAIRMAN. That is the township where two disinterested parties were permitted to open the ballot box and counted them in the afternoon?

Mr. SHIELDS. Yes, sir; while the voters were walking up to vote. That was the situation. Take the two wards in Climax. In one of them the condition was such that one, Mosier, a Democrat, objected, and one man, so hardened to such things, replied, "Well, what are you going to do about it," and laughed and gloated over it. Anyone acquainted with human nature knows that any man who makes an answer of that kind is so hardened by his environment that he is morally irresponsible, or he would not gloat and laugh over the wrong he was doing and that, if you please, in direct violation of a law which says you shall not solicit votes.

Mr. FREAR. You say that that man gloated and laughed when he made that statement? That being so, what is your information on that? Is that a matter of record? You were not the examining man?

Mr. SHIELDS. No, sir; I was not there.

Mr. FREAR. Then why do you make that statement? If you know nothing about it, except from hearsay, you should not present that to this committee.

Mr. SHIELDS. Because, if you please, no man under those conditions makes such a reply unless he makes it that way.

Mr. FREAR. Do you think that is fair?

Mr. SHIELDS. Yes; I do, absolutely.

Mr. FREAR. Without being present or knowing anything about it?

Mr. SHIELDS. Yes, sir.

Mr. FREAR. With only a record before you?

Mr. SHIELDS. Yes, sir; because a man does not make that kind of a reply and use that language unless he makes it with the mental attitude I described.

Mr. FREAR. I think that is an unfair spirit for you to assume.

Mr. SHIELDS. I do not desire to be unfair. It seems to me as though I have a right to draw that deduction.

The CHAIRMAN. The evidence in that case in the third ward shows that he did not solicit over 8 or 10 votes.

Mr. SHIELDS. I think that is true.

Mr. FREAR. Do you maintain you can not segregate those wards?

Mr. SHIELDS. I maintain the supreme court said it was an actual fraud; that is, an actual fraud in this case, and taints the whole precinct with fraud, and therefore the whole precinct must be thrown out.

Mr. FRENCH. May I make a suggestion?

Mr. SHIELDS. Certainly.

Mr. FRENCH. An examination of those cases where they go into the booths and solicit inside the rail and where the boards seem to be fairly well known shows that the court seems to make a distinction, probably on this ground: That where there is a mere violation by going into the booth and seeing a man mark his ballot and there is no claim of any fraud or solicitation, and it is shown that one of each party goes in, that that is not illegal, but where the soliciting is going on inside of the rail the court seems to make the distinction that that may go much further on the ground that the people who are about to vote may be influenced by it. That seems to be the reason for the distinction.

Mr. FREAR. That is one of the decisions.

Mr. FRENCH. Yes; that is the Michigan reason for the distinction, and you might be doing justice, if you adopt that reasoning, by throwing out the eight votes, but you might be overlooking many more of those votes that were influenced by that same conduct.

Mr. FREAR. By the conduct of the instructor?

Mr. SHIELDS. That is one of the things that is disputed evidence in this case.

Mr. FRENCH. Is there any evidence of what the instructor said or did? I understand not.

Mr. SHIELDS. I think not.

Mr. FREAR. I am talking about the other precinct. I am speaking of the precinct that Judge Post asked about, where the fraud was present.

Mr. FRENCH. That is right.

Mr. FREAR. There is no evidence as far as Sunfield is concerned.

Mr. SHIELDS. Now, gentlemen, I want to refer to just one phase of this proposition. I have shown you what the election laws of Michigan held and what the Michigan Supreme Court decision held. I call your attention to the contested case of *Belknap v. Richardson*, in 2 Hinds' Precedents of the House of Representatives, page 518, section 1042. That was a Michigan case in which the question arose in a contest over ballots containing distinguishing marks prohibited by the statutes and votes cast by inmates from the soldiers' home in that district. The supreme court passed on both of those questions and the committee followed the rules of court on all points of law. Our case is whether the election law prescribed certain things.

The supreme court has held that this precinct should be thrown out. The House itself in the Michigan case have said, in the case cited, that they would have followed on all questions of law. They can follow it or they can reject it, but that is our case, and that is what we are standing here upon, and we believe as firmly and as faithfully as men can believe that we are entitled to follow that logical sequence of law, authority, construction, and decisions, and that we have a right to go before this committee and therefore to the House and make a report, based, if you please, upon this record as to the testimony and facts, upon the express provisions of the election laws of Michigan, upon the Michigan Supreme Court decisions, and upon the precedents established by the House itself, and that under these decisions we are entitled to have a report that Mr. Carney be seated.

The CHAIRMAN. Is there any other case except this contested case that you have in mind?

Mr. SHIELDS. I have not cited any others. I have been through Hinds and other authorities, but it seems to me in the case I cited there was an express line of authority, absolutely point-blank on the same line we are on, and I did not go outside of it. It applies to the Michigan statutes, the action of Congress upon Michigan statutes, and the Michigan Supreme Court decisions, and I fail to see any reason for going any further.

Mr. FRENCH. Did you not come across a number of cases that involved this same question where Congress refused to recognize the contention that the law of the State be not followed exactly, where no fraud was shown and where Congress said the clear intent was to vote in a certain way and the votes were counted? One case I had in mind, I think, involved Senator Swanson, formerly a Member of the House from Virginia. I think that is the case that raised this identical question touching procedure, that involved a great number of precincts, and where Congress at that time held there was no substantial injustice done and that the voters were entitled to an expression of their opinion in a way believed at the time to be legal?

Mr. SHIELDS. There are a great many the other way. As a matter of fact, I have come to this conclusion, that most cases depend upon the immediate situation as they come before the committee of the House.

Mr. FRENCH. What do you mean by that statement?

Mr. SHIELDS. I mean as the facts of the cases come before the House. There seems to be, as I analyze it, a belief on the part of each House that it can do as it pleases in regard to a case as that particular case appears to them.

Mr. FRENCH. On the merits of the case?

Mr. SHIELDS. Yes, sir. I remember one case in which the House became so convinced that both parties were tainted that they refused to seat either one of them. But when we talk of precedents, I am frank to confess that I think the precedents in the contested cases in this House furnish about equal ground to prove anything on either side.

The CHAIRMAN. I think you are right about that.

Mr. SHIELDS. With the realization of that, I will say that we are not here without having considered the law and considered our rights and the powers of the House. We are saying that this is one of the cases in which the people are entitled, if you please, to the law as it is written on the statute books and by the courts and by this House.

Mr. CARNEY. Is there any case where the House has ever held that they have a right to override the statute law as it is plainly written on the books? Have you any case in mind where that is done?

Mr. FREAR. Yes; I think there is, where the statute makes new qualifications.

Mr. CARNEY. I mean on the question of the election machinery. The reason I ask that question is because there is a section of the Constitution that delegates that power to the State. It reserves the qualification proposition.

Mr. FRENCH. I think I can furnish you a multitude of cases that involve that very question, and I raised the question a minute ago, not that I do not agree with Mr. Shields absolutely in his statement that he can find precedents on many of these

questions, but I thought from his earnestness and from the cases that he had cited that he was purporting to give what he understood to be a well-defined line of opinion of this House, and I wanted him to know that there were other ideas touching the decisions of the House, and that the decisions are overwhelmingly in favor of the policy that Congress has the right to pass upon provisions of the State laws in regard to holding elections, that the ballots shall be marked and counted, that the officials of election precincts shall be designated, and the way names shall be spelled, and a multitude of questions of that kind that are recognized in the statutes of the several States, and yet where Congress has refused to follow the mandates of the States in so providing.

Mr. FREAR. In other words, you hold that they have not only the power, but the right to say by such a decision that the unseated member or contestant is to be bound by one law and the man who actually gets the certificate by another?

Mr. FRENCH. No; I would not.

Mr. FREAR. It may be just the opposite.

Mr. FRENCH. Take this proposition I had in mind. Take the initialed-ballot proposition. You have a right to presume, as a matter of law, that the election boards obey the law in the absence of any showing to the contrary. The presumption is, in the absence of any showing, they obey the law, and we know on the plainer questions they usually do. The question of the initialed ballot is one that is well understood generally speaking. It is fair to presume that every uninitialed ballot outside of Windsor Township that constituted a vote for the Democratic candidate was not overlooked in the other 150 precincts but was thrown out.

Mr. FREAR. Why?

Mr. FRENCH. Because they knew the law and it was right and legal it should be thrown out.

Mr. CARNEY. Those votes were all counted for every other candidate, and the question was never raised until they examined the box.

Mr. FRENCH. In the other precincts none of those votes for the Democratic candidate were overlooked that had no initials upon them. These things happen frequently, sometimes in twos and fours, and otherwise.

Mr. CARNEY. These votes were all counted at the general election for all the Democratic candidates, as suggested awhile ago.

Mr. FRENCH. In this particular instance?

Mr. FREAR. Let us take this particular instance where those initials failed to appear. Those votes were regularly counted and reported. Was that not evidence to your mind that in every other precinct that same condition may have existed, that the initials may not have been on in a single case?

Mr. SHIELDS. No, sir; that is not the presumption; it is a possibility, but not a presumption.

Mr. FREAR. It was not discovered here. I am speaking as a matter of fact. It was not discovered.

Mr. SHIELDS. Not in that particular instance. I do not think you find it occurs very much, Mr. Frear.

(At 11.45 a. m. the committee adjourned until Monday, December 8, at 10 o'clock a. m.)

COMMITTEE ON ELECTIONS No. 1,
HOUSE OF REPRESENTATIVES,
Monday, December 8, 1913.

The committee met at 10 o'clock a. m., Hon. James D. Post (chairman) presiding.

The CHAIRMAN. You may proceed, Mr. Smith.

STATEMENT OF MR. JOHN M. C. SMITH, CONTESTEE.

Mr. SMITH. I want to thank the chairman and also the members of this committee for their kindness in permitting me to appear in person before them in this case. I was very much interested in the presentation of the case for the contestant, and it is not my purpose to deviate unnecessarily from the facts as established by the record, and if I get outside of the record I hope I will be corrected.

The CHAIRMAN. Your attention is liable to be called to it if you do.

Mr. SMITH. If I do not state the facts as they are. I do not expect to present the case with the earnestness possibly that my friends on the other side have, because I know that you are looking for light and assistance in trying to determine what is the correct thing to do in an election case that I think has been honestly conducted and fairly conducted, in which the contestant is not injured, and, by a majority of the votes cast by

the legal voters of the district from which I come, I think that I am duly and fairly elected. If I did not receive a majority of those votes I would not expect to represent that classic district, for it is a district that anyone can be proud of representing. There are five college centers in it, with an order of intelligence as high as any district in the country, composed of honorable and upright citizens, and any errors that have been committed up there have not been committed intentionally, and I wish to call the attention of the committee to the fact that in this whole record, which is unnecessarily voluminous, according to my idea, I do not think there is a fraud proven. There is not a corrupt practice shown. There was not repeating, and I will say now, without fear of successful contradiction, that the record shows as honorable a campaign on the part of the contestee and his friends as was ever held at an election poll.

My friends on the other side wish to stand absolutely upon the laws and a technical ruling upon the laws without allowing this matter to be tempered with justice, or without the consideration that every vote cast there was cast by a duly qualified elector of that district, and, further, I firmly believe that every man who is a good, law-abiding citizen of our Republic has got the right to vote once, honestly and uprightly and have that vote counted, and I think the contestant in this case will recede from his position in asking to have this case decided absolutely upon the letter of the statute, and he comes here and makes that claim, and I say to the gentlemen of this committee that that claim gives him no standing in this case, and I will call your attention to the fact that if he is asking for the rules of the statutes to be strictly complied with and his case depends upon that statute alone, which apparently it does, then I will ask him whether or not he is willing to concede to me the strictness of the rule that he asks, or does he want the benefit of a rule that he would deny to me, and I will ask him if the statute of the United States does not say that he shall not take any testimony that is not specifically set forth in his notice of contest, and in the Windsor case and in the third ward of the city of Charlotte there is not a scintilla of evidence nor of notice; there is no charge and there is no ground for one and there is no specific allegation, but he wants the gentlemen of this committee to set aside the statute of the Republic applying to this case and deprive these honest voters of their franchise under the strict letter of the statutes of the State of Michigan. I say that for him. Now, the claim is made.

The CHAIRMAN. Will it interrupt you to ask questions as we go along? You say as to the third ward of Charlotte and Windsor precinct that no notice as to any irregularities there, no specification, is contained in the notice. Did not they amend it?

Mr. SMITH. They filed an amendment, as I recollect it, after they should have given their notice, about 90 days after their time expired for giving the notice and after the ballots had been destroyed, so that we could not have a count of the ballots there.

Mr. GRANT FELLOWS, of counsel for contestee. They asked for leave to amend, and that leave has not been granted.

The CHAIRMAN. Who granted such leave.

Mr. FELLOWS. It has not been granted; they asked that leave.

Mr. SMITH. They asked subsequently, but it has not been granted. I want to quote the rule we have of the taking of the testimony in this case, and we can probably save a little time by my just referring to some memoranda I have here. In this case a compliance with the strict letter of the law was not confined solely to one side. Departures occurred on both sides. That is apparent, but in the end every legally qualified voter who desired to vote and cast his ballot voted his ticket and he had it honestly counted the way he wanted it, without any corruption, intimidation or fraud or corrupt practice whatever. I charge that as being in line with the proof--900 pages here--and I ask the other side to mention a case where we deviated from the record.

They say in two little instances that John Nichols, in the second ward of Charlotte, put 6 ballots in the ballot box, and that is an open fraud, because he was running for a minor office upon the Republican ticket for circuit court commissioner. Now, in that whole record they never say a word about me. They never get me at the polls even. I was not hustling around the polls, nor I did not blame the contestant in this case for his activity. I did not ask any proof of it, but I never was at those polls except to vote. I never knew where they held them, except from hearsay, in my own city, and I voted and went about my business and allowed them to vote as their own free consciences dictated. They said John Nichols was guilty of fraud because on the ticket he put 6 ballots in there. How did he come to put them in the box? One of the inspectors was taken sick and had to go home and go to bed. My friend stated in his opening that the record does not show that he was sick and had gone to bed. I say it does, and I can produce it if he denies it now, and, Mr. Chairman, John Nichols put those 6 ballots in the box when the Democratic challenger stood right by his side, and the very Democratic challenger that they placed upon the stand. Their only witness to that effect testified that he stood beside him and he

did no wrong, and I would not have permitted it. And the gentlemen on the other side say that that precinct should be thrown out for that. That is what they say, but I claim it ought not to be, because that might lead to such a condition of things that you could not conduct your elections. Suppose something would happen? Suppose the building would catch on fire, or suppose two or three officers became sick? Suppose no one was there and you wanted to keep within the record? Somebody had to conduct the election. But that is the sum total of the fraud in that matter.

In another case they went outside of their notice of contest and they did not even ask to amend their notice of contest in the third ward of the city of Charlotte, where they said there was electioneering down at the polls, and the record does not show that. But they are asking that we decide this case upon the strict rules of the statutes of the State of Michigan; and I say if that is so, they must follow the statutes of the Republic, and, further than that, they have no right to complaint, as my friend did in his eloquent peroration. We are law-abiding citizens up in Michigan, and we have certain regulations to guide us, and do not say to us that we must be foreclosed from acting under those rules. Does he contend that his practice in the circuit court is taken out of the Tiffany Court Practice? Does he know that in negligent cases, where a person is injured on a sidewalk, that that person is sent out of the State to gain a residence so that the action can be brought in the Federal courts, and that where life insurance policies state a man takes his own life and he is prohibited from recovery that he is sent out of the State in order to bring an action in the Federal courts so an action would lie, and my friends on the other side want to come before this Congress and come before this committee—and I do not ask a rule that I am not willing to abide by—and has elected to come before this forum, and when he comes here he must be guided by the rules and practice before your honorable committee, and I say there is no fraud.

I say that this record shows that Jackson Mosier said that this inspector said down there to a confused voter who stated, if you please: "I want to vote the straight Democratic ticket, except for two persons, Mr. Stores, the Republican, for sheriff," and one other that I can not think of just now—that that inspector said, "How about J. M. C. Smith, my neighbor?" And he says that is a fraud, and Jackson Mosier said that they stated it to one voter, and, to be fair about it, he undertook to shade his testimony by saying there were suggestions made to all those asking for instructions, and the statute says that information shall be furnished by the inspector when he asks for it. Is there any heinousness in that? I was not there. How could I help it? It was not carried on in my interest, and although Mr. Mosier undertook to shade his testimony by saying there were suggestions made to all those asking for instructions—he thought there were seven or eight—he did say on his direct examination—he was their witness—there was only one, just one, and that is all, and I put on every inspector and I put on the tally clerks and every man there, and every one of them said it was never made except to that one voter, and when my friends were put on the stand the hardest thing to disprove for me was the imputations or the surmises—something you could not get hold of—but it was their witness who testified to the fact that it never was made, except in one instance, and then when the counsel on the side of the contestee turned the witness over and he was their witness, then he said the same suggestion was made to those others asking for instructions, and that was the sum total of all that, and every witness I could find around there who knew about it came in willingly and told me there was nothing connected with that, and I will ask them whether or not they can find anything in the record to the contrary.

The CHAIRMAN. Mr. Smith, did not Mr. Mosier testify that these same suggestions to voters, who asked for instructions, were made to seven or eight?

Mr. SMITH. That is what I said—all those asking for instructions.

The CHAIRMAN. You meant seven or eight?

Mr. SMITH. Yes, sir.

The CHAIRMAN. Do you admit that under the decision of the attorney general against McQuade the supreme court in that case held that would vitiate the whole poll in that precinct?

Mr. SMITH. No, sir.

The CHAIRMAN. You do not admit that?

Mr. SMITH. No, sir; I would not want to admit that. Now we are in a different court, and I do not claim you are bound by the statutes or the decisions of our court.

The CHAIRMAN. The point I put to you is whether the decision of the supreme court in that case would apply here, as claimed by the gentlemen on the other side?

Mr. SMITH. I would not claim that is a well-considered case, and it is contrary to the rulings of the Committee on Elections here. But you asked me about that case. No; I do not admit it. Of course there is nothing in the notice of contest that this

thing was coming up in any way, no amendment asked or understood, and I want to read a little bit about the rule we were up against here in that case.

The CHAIRMAN. The third ward of the city of Charlotte is not included in the notice of contest or amendment?

Mr. SMITH. No, sir. They are here as a matter of simply favorites. This same charge is made in their brief. They evidently overlooked it.

The CHAIRMAN. Give us the page of the record.

Mr. CARNEY. Page 7 of the record, paragraph 4, of the original notice.

Mr. SHIELDS. And paragraph 5 of the prayer on page 12.

The CHAIRMAN. The townships of Carmel, Bellevue, Bunton, Eaton, Roxand, Windsor, and the first, second, third, and fourth wards of the city of Charlotte.

Mr. CARNEY. And in the prayer.

Mr. SMITH. The charge is what I am talking about, and that will aid the committee and it is very far from my purpose to make a statement here.

Mr. FELLOWS. The charge is that they did not swear the voters as to their inability to prepare their ballots.

Mr. SMITH. I think I am correct in that statement.

The CHAIRMAN. You may proceed, Mr. Smith. We will look into that.

Mr. SMITH. I want to say something about the rule they proceeded under, and I claim that was unfair, that it was unjust, and it is unconscionable—the rule that they laid down there for the taking of their testimony. I am not saying that is in the record, but they took 900 pages of testimony here, and undoubtedly you know that you can not look it over so as to become very familiar with it. That would be asking too much. I am very glad of the opportunity to appear and answer any questions that will throw any light whatever upon this matter. We were referring to the third ward, and I make the point against two of those wards that they violated the statute of the Republic to invoke the statute of the State of Michigan, and the statute of the Republic is what you are proceeding under. While the statute of the State of Michigan has fixed all our general election laws, of course a person on the bench, when he reads what the statute is, must decide it so and so, but that cold rule is not the rule by which this committee is trying to say who the electors wanted there and who was honestly elected in the third ward of the city of Charlotte. We maintain that no allegations or grounds whatever concerning this ward are contained in contestant's notice of contest as required by the rules of the committee or the statute, but the proof was taken under the verbal notice found in the record during the taking of the testimony, in which counsel for the contestant stated that was the rule, and I will read from the record what he said:

"Mr. ADAMS. We will give you notice now that any new facts that develop in the taking of this testimony or any other testimony on behalf of the contestant that we shall apply for an amendment to the petition; and you can, therefore, prepare yourselves to meet the facts presented that may not be set forth in the petition.

"Mr. MAYNARD. We will object to the taking of testimony upon matters that are outside entirely of the notice of contest."

How are we going to prepare ourselves "to meet the facts presented that may not be set forth in the petition"? A pretty hard rule. This was on page 67 of the record. The same thing is on page 271, where they invoked the same rule. Now, if they say they want this decided according to certain statutes, then we want to say that if we are to be loaded with the burden please give us the benefit that goes with the invoking of such rule and apply it to both sides.

Now, I wish to call your attention to the briefs in the case, and I will only take up those things that might give a little light or to show the nature of the case or what the contestant claims here and what I think is very unfair and not authentic.

The contestant in this case makes the charge that my answer is not sworn to, and I tell him, who has his name and oath to the notice of this contest, that I can pick out several things that are absolutely untrue. He swore in his petition very absolutely and solemnly that he had a majority of 31 votes down in the township of Climax, and on account of that ballot he received a majority of 11, and he already had one. He swore solemnly there were 49 votes that were misleading, that had not been returned by the inspectors on account of a mistake, and that there was no way of getting at it up there in Michigan. He asked the committee if they would not allow him to bring that ballot box down and count them, and I told his attorneys to go there and count that precinct and give him every vote. He swore he had a majority of 31 and he got 11, and we conceded it to him, but when he says there is a mistake in the second district of Battle Creek the record shows that they neglected up there to return 7 votes. We are met with every objection from the beginning to the end, and with the imputation of fraud, and every stumbling block was put in our way, and if there

is anything that I have not done to throw light on this case at an expense I can ill afford, I ask you gentlemen what it is.

The contestant says that I did not swear my children. I will ask him what they could have sworn to. He says he saw my boy coming across the corridor with some of those returns in his hands.

The CHAIRMAN. Is that the fact, Mr. Smith?

Mr. SMITH. That is the proof.

The CHAIRMAN. What was the boy doing with those returns?

Mr. SMITH. They had been in the treasurer's office collating them on the adding machine, and there were some 25 precincts in my county. All the proof is that Mr. Robinson swore that he saw him with some returns in the presence of John Davis and Mr. Prague, ex-county clerk, walking across the corridor.

The CHAIRMAN. Were these returns turned over to your children?

Mr. SMITH. No, sir. It was just proved that they had them. They asked the boy what he done. There was nothing proven there that these children did a venal act—nothing but the carrying of a few returns across the corridor. He is a boy 14 years of age, and they asked him what he was doing around the courthouse there.

The CHAIRMAN. Did they not call your daughter?

Mr. SMITH. Yes, but they did not put a particle of proof in. They claim she was there at the office. I ask him if they claim anything else. The only proof is that she was in the county clerk's office, and the contestant wants a seat in Congress because my daughter sat in the county clerk's office, and he wants a seat here because my son 14 years old, in the presence of the ex-county clerk, carried a few returns from the treasurer's office to the county clerk's office, 6 feet across the corridor.

Mr. CARNEY. The ex-county clerk.

Mr. SMITH. That is what I say. But if he was the county clerk, if this rule is going to be invoked do not let your children go to the polls or to a county clerk two years after an election to see what the returns are for your father. There is not a particle of venality shown in that, and I say it without any fear of contradiction.

Now, then, I want to talk about these returns. I was going to say, however, that down in the third ward it was stated that one of the voters said he wanted to vote for two Republicans, and they suggested one of them might be J. M. C. Smith, his neighbor. It was proven I was a neighbor of this man. In section 3636 of Laws Relating to Elections in the State of Michigan is found, on page 57, these words:

"When an elector shall not be challenged or shall have taken the necessary oath or affirmation he shall be permitted to vote. On entering the room the inspector having charge of the ballots shall deliver to him one of them, and the clerk shall enter his name upon the poll list, together with the number of the ballot given him and on request such inspector shall give explanation of the manner of voting; if deemed necessary by the board an interpreter may be called."

That gives him the information, and our statute further provides that unless he is challenged that voter shall be permitted to vote, and there was a Democratic challenger right there and he permitted this man to vote, and he had said, on page 46 of the record, that that was the only one that that suggestion was made to. That is the Democratic challenger. That is their witness. He said that. Mr. Dunning, the inspector, on page 405 of the record says that is the only time. Mr. Fisher, as honorable a man as the sun shone on, on page 425 of the record, says that is the only time. Mr. Munger, on page 428, one of the tally clerks, said that was the only time, and Mr. Dowdigan also, and Mr. Sawyer, a splendid gentleman in every way, a Republican challenger, said that was the only time. Who says there is any fraud? They brought in everybody they could, and it was admitted on cross-examination that those instructions were given to all those asking for those instructions. That was testified on both sides.

Now, he says, that my answer was not sworn to, and I want to read a little of the record of the case that is very familiar to you and that makes the same claim that I make and contend for in this case, and I will then give the signature.

"And for further and counter notice of contestant therein you will please take notice that I shall rely on the following grounds upon which to rest the validity of my election and invoke this rule: That in said election I received a plurality of all the votes cast in said district by the legally qualified voters in said election, and in the returns thereof by the judges in said election of all the election precincts in said election I was duly and properly awarded the certificate of election to said office."

I claim that is word for word in this case.

"Second. I deny your right to alter or amend the notice of specification and charges made by you hereafter, as the law requires that you shall give me notice of such specifications and charges as you wish to make within 30 days after the ascertainment of the result, said 30 days having expired."

It was more than 90 days in this case that had expired.

"And now having fully answered your claims and contests for the congressional seat to which I was elected, I respectfully claim that your petition in this behalf should be disregarded and the proceeding dismissed. Oscar W. Underwood, Birmingham, Ala., December 19, 1896."

And my friends know there was no law asking that I should put a jurat to this answer. And why do they insist, and why are they here?

Mr. CARNEY. We can clear that up. I think you misunderstood it. We call attention to the fact that we asked the testimony to be stricken out.

Mr. SMITH. You make a specific charge of that and I have a right to comment on it. If you now say there was nothing to it, all right; but the charge was made.

Mr. CARNEY. We made no argument upon it and made no claim upon it.

Mr. FELLOWS. Then why should it have been put in there?

Mr. CARNEY. As a fact.

Mr. SMITH. I am reading the brief as it is made here. Now, then, I find in his brief also that the charge is made here that there were returns changed at the personal request of John M. C. Smith, and I wish them to point out a place in the record where there was a return made at the personal request of J. M. C. Smith. They can not do it, because it is not in there.

The CHAIRMAN. Where is that in the brief?

Mr. SMITH. On page 2, Judge, of their first brief, about halfway down in their second paragraph, where my name appears in capital letters.

I want to call the attention of the committee to the statement made on page 3 of the brief where the brief states that I, personally, J. M. C. Smith, contestee, and his attorney suppressed certain affidavits, and I will ask them to point out the evidence in that case. There is none.

Mr. CARNEY. Do you wish us to do it right now?

Mr. SMITH. Yes.

Mr. CARNEY. All right, we will do it right now.

Mr. SHIELDS. It is in the record, page 249.

Mr. SMITH. I will ask Mr. Carney to look it up.

Mr. SHIELDS. May I read it right now?

Mr. SMITH. Very well.

Mr. SHIELDS. D. W. Knapp was on the stand.

"Q. If you can find that statement, I wish you would bring it back with you to-morrow.—A. Well, I can't do it.

"Mr. ADAMS. I would like to have the witness see if he can find it and come back here to-morrow.

"Mr. FRANKHAUSER. Will it do if he sends it in a letter?

"Mr. ADAMS. No. I would like to have him come back to-morrow, too."

Mr. SHIELDS. In that connection I would like to read from page 320 of the record—in the testimony of Mr. John C. Nichols.

Mr. CARNEY. I would like to make this suggestion: The paper that the witness was referring to and that they were requesting him to produce was the copy. Mr. Nichols has testified this original had been delivered.

Mr. FELLOWS. We will let you make oral proof of the contents. That was the statement made by me.

Mr. SMITH. Let me call the attention of counsel that they had the original in their files there.

Mr. SHIELDS. It was stated Friday it was an affidavit signed by some of the members of the board in Sunfield Township.

Mr. FELLOWS. And afterwards produced in court.

Mr. SHIELDS. As we will show you on page 320, at the bottom of page 320, Mr. Nichols on the stand.

"Q. You went out into Sunfield and got some affidavits, didn't you?—A. Yes, sir.

"Q. Where are they?—A. I don't know.

"Q. What did you do with them?—A. I think I gave them to Mr. Smith.

"Q. You wrote the affidavits out, didn't you?—A. Yes.

"Q. Of whom did you get affidavits?—A. Personally, I got affidavits from Mr. Mapes—I can't tell you his given name; Harry Mapes—and I think the other—

"Q. Huber?—A. No, sir."

Mr. SHIELDS. That is the same paper that Mr. Knapp was discussing on pages 249 and 250, when the attorneys said they could not produce it.

The CHAIRMAN. That is the statement that Mr. Smith was discussing on page 3 of the brief?

Mr. SHIELDS. Yes, sir.

Mr. SMITH. About suppressing affidavits. If I suppressed any affidavits there the record will contradict that by showing that they were not delivered to me. On

Saturday night during the taking of this testimony Mr. Nichols was asked if he would look in his office for that paper and bring it in to the next meeting on Monday morning, and Mr. Nichols said yes, and on Monday morning he handed the counsel the paper.

Mr. SHIELDS. Is that in the record?

Mr. SMITH. Yes.

The CHAIRMAN. Did they furnish you that paper?

Mr. SHIELDS. They did afterwards.

Mr. SMITH. Just when they told you.

Mr. CARNEY. After they discovered we were in position to make oral proof of it.

The CHAIRMAN. If you furnished them with that paper, you did not suppress it.

Mr. SMITH. I thank you, Mr. Chairman.

Mr. FREAR. Would it not be important at this time to see what that affidavit was?

The CHAIRMAN. Yes; I think so.

Mr. SMITH. I will read it. Here is the request that was made. Mr. Nichols was on the stand Saturday, March 22, 1913. They commenced at 9 o'clock in the morning. He was up at Sunfield, and they say he went up there as my counsel.

Mr. CARNEY. He said so.

Mr. SMITH. I am going to say that I sent him up there and tell why I sent him, because he was a notary public, and I sent him up after the board of county canvassers had met; and Mr. Carney was over there filing affidavits from Sunfield, and I asked him to go up there, 23 miles over pretty bad roads, and see what there was to that, and he brought back these two little affidavits. Now, then, they read into the record the affidavits of Mr. Hager and Mr. Mapes, which are found on page 324. Those are not the affidavits they say were suppressed, but they read those affidavits in. Now, we talked about the Knapp affidavit, which they say we suppressed, and this is what they asked Mr. Nichols, who went up and got it and never showed it to me:

"Q. Then in the face of all that, you drew that Exhibit 60 out there?—A. Yes, sir.

"Q. And had those men sign it, Mr. Hager and Mr. Mapes?—A. They signed it.

"Q. You drew a like affidavit for D. W. Knapp to sign, did you not, of like tenor?—A. Yes, sir.

"Q. Reciting, in substance, the very same facts that you recited in Exhibit 60?—A. Yes, sir.

"Q. And no other facts except those you recited in Exhibit 60?—A. I don't know.

"Q. Did you ever see that affidavit of Mr. Knapp?—A. I drew it.

"Q. Did you see it after it had been signed by him?—A. Yes, sir.

"Q. Where did you see it?—A. In the city.

"Q. Where in the city?—A. I think in my office.

"Q. Was it delivered to you?—A. It was.

"Q. What did you do with it?—A. Well, I suppose I took it to Mr. Smith; if I didn't, I have got it.

"Q. I wish you would look for it and see whether you have it; and if you have, produce it here at the next time to which this commission adjourns to-day.—A. All right."

Mr. SMITH. That was while Mr. Nichols was on the stand. He was asked to produce it. Is there anything in that to show he was attempting to suppress it? Is there anything showing that my counsel was suppressing it? Is there anything showing that I suppressed it, when he says I will produce it? Turn to page 334. The 23d was on Saturday, the 24th Sunday, and the 25th Monday, and Mr. Nichols goes on the stand in behalf of the contestee, and the first thing is this by my attorney who they say suppressed it.

"Q. Since recess have you looked over and found the affidavit of D. W. Knapp?—A. Yes, sir.

"Q. Is that the affidavit [showing witness Exhibit 62]?—A. Yes, sir.

"Q. I show you Exhibit 61. Is that the affidavit Judge Adams asked you to look for?—A. Yes, sir.

"Q. You found it in your office?—A. Yes, sir.

"Q. Is that a carbon copy of this affidavit signed by Mr. Hager and Mr. Mapes?—A. Yes, sir.

"Mr. FRANKHAUSER. We offer it in evidence.

"(Affidavit reads as follows:)

"STATE OF MICHIGAN, *County of Eaton*, ss:

"D. W. Knapp, being duly sworn, deposes and says that they reside in the township of Sunfield, Eaton County, State of Michigan; that at the general election held in said township on the 5th day of November, 1912, J. H. Palmer, D. A. Hager, and F. H. Bacon acted as inspectors of said election, and that Harry Mapes and D. W. Knapp acted as clerks of said election; that immediately upon the closing of the polls of said

election said board of election inspectors proceeded to canvass the votes cast at said election, according to law; that about the hour of 1 o'clock in the morning of the 6th of November said J. H. Palmer went home and did not return to finish the canvass until said canvass was nearly completed; that the canvassing of said ballots was done in public; that during the entire time of counting said ballots the public might have been present if they so desired, but as to whether at all times during said count there were others present besides said board they are unable to state; that they deny that they had any knowledge of any report that John M. C. Smith had lost the election to Congress by a small majority or otherwise; that the other members of said board were not absent from said polling and canvassing place to exceed 30 minutes; that they had a talk about adjourning the count because of the lateness of the hour, but that they received information from the prosecuting attorney of said county that they should proceed with the count until it was completed; these deponents further say that the result of said canvass was read aloud that any persons who happened to be present might know the result.

“D. W. KNAPP.

“Subscribed and sworn to before me this 16th day of November, A. D. 1912.

“[SEAL.]

“J. H. BERA, *Notary Public*.

“My commission expires February 28, 1913.”

Mr. SMITH. I say from that, gentlemen, that that statement in the brief is too strong.

Now, there is another little statement on page 6 of the brief that I have already mentioned, and I will not state it any further; it is in the brief, and is misleading. This is the statement I object to: “The record shows conclusively that the soliciting of votes in this precinct was open and continuous during the whole day.” I will ask the gentlemen on the other side if that is not a little strong?

Mr. CARNEY. Well, do you want me to answer the question?

Mr. SMITH. Yes.

Mr. CARNEY. Well, Mr. Mosier testified it continued throughout the day during all the time he was there. He was absent about 30 minutes at the noon hour.

Mr. SMITH. I will say that is not in the brief.

Mr. FREAR. You mean it is not in the record?

Mr. SMITH. It is not in the record. That is not a fair construction of his testimony. He said that instructions were only given, and that was given time and again to those who asked for instructions. They make the further statement in the middle of that page—

The CHAIRMAN. Suppose we should find that in that third ward of the city of Charlotte that soliciting votes had continued for, say, two hours at a time. What effect would that have on the polls?

Mr. SMITH. I think the strongest that you could put it would be that it might have affected these six or seven that the evidence shows that the suggestion was made to after he had sworn there was no one solicited except one person. They have a right to give instructions, so his testimony does not fit to the point they desire to make. I think the witness, to be fair on all sides, did not understand, because the fair purport of the question and answer is that the suggestion was made to those who asked for instructions. But if they find it continued for an hour or two hours I think my evidence would overcome that, and I do not see how that could possibly happen, because nobody, as I see it, could say that the testimony fairly showed it. I would not like that. I disavow any request of a man to ask a voter at the polls to vote for me. I disavow it. The record does not show it, and I would not want to favor it, and I would not want my friends to send in a number of telegrams here—and I hope they are all my friends, without me, in the presentation of my case—saying I did not approve of that practice. I would say that. I am a fair man, and I want to use everybody right, and I think my friends down there who sent those were misdirected. Down below on that page he says the testimony is not specific that the ballot boxes were locked up at Sunfield. That is on page 6. The testimony is not specific; that the ballot boxes were locked up, and he cites John Palmer's testimony on page 73 of the record. One of the inspectors, he said, went home and went to bed. He was one of the Democratic supervisors. He could not hold him there. The board in Sunfield was all Democratic, but the clerks—he could not control it exactly—were the political friends and advisers of the contestant in this case, and Mr. Palmer asked for Mr. Carney and Mr. Soyars, and he said, as the record shows, they voted the straight Democratic ticket for Mr. Carney. That question was asked, and they did not answer it.

Mr. CARNEY. He did answer it.

Mr. SMITH. He answered it; but the question was asked counsel here, and he did not give any light in regard to it.

Mr. CARNEY. I gave light on it.

Mr. SMITH. I beg your pardon if you did.

Mr. CARNEY. Mr. Palmer did not say how he did vote, but Mr. Soyer stated he voted the straight Democratic ticket and voted for Mr. Carney. You were mistaken when you said Mr. Palmer said it.

Mr. SMITH. I beg your pardon, but I so understood it.

Mr. FELLOWS. The general presumption in Michigan is that a Democrat votes his ticket straight.

Mr. CARNEY. There is the same presumption as to a Republican.

Mr. FREAR. This last year, possibly.

Mr. SHIELDS. The general presumption is that if you put a Democrat or Republican on oath as to what he did at the polls, he will swear that he voted for his party.

Mr. FELLOWS. The way the Republicans have been voting for Democratic governors up there shows they have been splitting up.

The CHAIRMAN. This does not throw any light on this matter. Let us confine ourselves to these charges.

Mr. SMITH. On page 6 he says the ballot boxes were locked up. On pages 252-255 there is specific testimony there that the ballot boxes were locked up, so that contradicts the statement in their brief there.

Now, I call the attention of the committee to another statement at the bottom of page 18 of the original contestant's brief:

"Schneider further testified there was no data in the box, unless we used the figures that were on the rolls of tickets, which we did use in correcting the returns."

That is what the counsel state in their brief. I wish to read a little from Mr. Schneider's testimony in the record, pages 136 and 137, and see whether that is a fair statement.

Mr. SHIELDS. The reference to the record as pages 145 to 136 is incorrect, and the statement begins with the last sentence on page 135 and goes on to page 136. That is taken verbatim from the testimony, but it is a typographical error, or in the citation.

Mr. SMITH. I will call the attention of the committee to those statements in the brief. Schneider testified there was no data in the box unless we used the figures that were on the tickets which, we did use in correcting the returns. He refers to the record on pages 135 and 136, and he states the record is wrong, and I want to call your attention to the fact that that statement is not in accordance with the testimony.

Mr. CARNEY. Read the last line on page 135 and 136 and see whether it is there or not, without a word changed.

Mr. SMITH. I am quoting the statement in the brief, that he says there is no testimony. Mr. Schneider testified there was no data in that box.

Mr. CARNEY. Read the last line on pages 135 and 136.

The CHAIRMAN. Let Mr. Smith proceed.

Mr. SMITH. At the bottom of the page, 136, I read this:

"Q. Now, when that ballot box was brought before your board of county canvassers by that election board, you opened it?—A. I did.

"Q. Did you find anything in that ballot box besides the ballots?—A. We found a few scraps of paper, but none of them were the figures from which this report was corrected.

"Q. The first time I am referring to.—A. No, sir; we didn't find anything; we took the tickets.

"Q. Was there anything else in the box besides the tickets the first time you opened the ballot box that you noticed or found?—A. Well, these scraps of paper in the bottom we didn't molest, didn't look for; we didn't think there was anything there we wanted to see."

He says that Schneider swore there was no data in the box.

Mr. FELLOWS. The whole of the testimony must be taken into consideration.

Mr. FREAR. I am trying to get Mr. Carney's point clearly. I understand there was a typographical error on the page.

Mr. SMITH. But he makes the statement there was no data in the box to correct the returns from. I am quoting his testimony to show that Mr. Schneider swore they did not look for any data, that there was other things in there; and Mr. Christian, the man who made it, says he made it on the night of the election when they got through, and "I put it in the box," and he says, "That is the paper I made, and I put it in the box on the night of the election." There is no contradiction of that testimony, but I say Mr. Schneider did not swear there was no data in the box, as counsel says in that charge, but he says:

"Was there anything else in the box besides the tickets the first time you opened the box that you noticed or found?—A. Well, those scraps of paper in the bottom we did not molest. Didn't look for; we didn't think there was anything there we wanted to see."

Mr. SHIELDS. Will you read the rest of it? I will read it. It says at the bottom of page 136:

"Q. Now, when that ballot box was brought before your board of county canvassers by that election board, you opened it?—A. I did."

"Q. Did you find anything in that ballot box besides the ballots?—A. We found a few scraps of paper, but none of them were the figures from which this report was corrected."

"Q. The first time I am referring to.—A. No, sir; we didn't find anything; we took the tickets."

"Q. Was there anything else in the box besides the tickets the first time you opened the ballot box that you noticed or found?—A. Well, these scraps of paper in the bottom we didn't molest, didn't look for; we didn't think there was anything there we wanted to see."

"Q. Did you find any tally sheet or poll book?—A. No, sir."

"Q. Or statement book in that ballot box the first time your board of county canvassers opened it?—A. No, sir."

I want to say that our quotation in the brief is accurate, but beginning at the bottom, Mr. Schneider states there was no data, and I am reading from the record. "There was no data in the box unless we used the figures on the roll of tickets which we did use in correcting the returns according to those figures which we found on the back of each roll." I want to show the quotation is correct from his testimony.

Mr. SMITH. I say it is misleading when he makes the statement that there was no data there, and Mr. Schneider swore to that and that they did not molest the data in the box.

The CHAIRMAN. Does he claim the data was on this scrap of paper?

Mr. SMITH. Yes, sir; the size of foolscap, and he made out a little statement similar to one you would make in a bank, and he said he did this from custom and habit to see what the straight vote was and how it came out, if it corresponded with the tickets and if they tallied.

The CHAIRMAN. That was not the official tally sheet?

Mr. SMITH. It was just paper. They are permitted to put all the papers that they have around there in the box. There is no law regarding it, but it was in there; it was one of the papers in the box.

Mr. FREAR. Is there any other testimony as to what was found in the box outside of what Mr. George W. Schneider testified to?

Mr. SMITH. Yes, sir. I might as well take it up here now. There are some things in the brief that will need attention, but I will look that up now. When the board of county canvassers met down there they saw there were no straight Republican or Democratic tickets from governor down returned from the second precinct of the second ward of the city of Battle Creek. They met in a different town, the county seat, Marshall, some 10 or 11 miles away from Battle Creek. Battle Creek is the largest city in the county and one of the largest in my district. Now, what they met there, Mr. Schneider's testimony is that he knew there was a mistake there. Now, of their own volition, without interference with either the contestant or the contestee, they sent down for the box, just as the law provides, and the inspectors, or the people having charge of the box—the law does not say they shall summon the inspectors in the first instance, but I think one or two inspectors came with the box that first time and the other gentleman who made that memorandum was sick. Now, then, they met up there—

Mr. FREAR. The board of canvassers?

Mr. SMITH. Yes, sir; and Mr. Schneider they meet up there is a Democrat; excellent man so far as I know. I know him to be a very representative man, and I know he is faithful to his creed. They, of their own volition, corrected that return by seeing some memorandum on the back of the ballots that they rolled up, which said: "Republican, straight, 66; Democrat, straight, 66." Schneider said he knew there was a mistake. Why? Because the normal vote of that precinct was from 102 back to 96, which I had received on the Republican side. The normal vote on the Democratic side from governor down was 57. I had only received by the returns 31 votes out of the whole precinct, where the normal Republican vote was from 96 to 102.

Mr. FREAR. The normal Republican vote at this same election?

Mr. SMITH. Yes, sir; and the contestant in this case, Mr. Carney, had only received 23, where the normal vote was 57, and so Mr. Schneider said he knew there was a mistake. The law says we shall send and get the boxes and the custodian shall

bring the boxes and the key, and if they correct or bring papers in the box and memoranda, they shall be corrected and the board shall canvass from the corrected returns. That was all true, so they corrected it.

Mr. BORCHERS. Did the inspectors correct?

Mr. SMITH. Yes, they did, but they did not call the inspectors the first time.

Mr. BORCHERS. But the county inspectors corrected the returns from this memoranda they found in the box?

Mr. FELLOWS. The inspectors in the ward made the correction the first time, and the second time this inspector who made this particular memoranda was sick and was not present.

Mr. SMITH. I want to read the law they were acting under. That may guide us a little. I read from the laws relating to elections in the State of Michigan, compiled by the secretary of state, page 82, section 239, which was offered in evidence. I will read it because I want to give all the light to the committee on this subject that I can.

The CHAIRMAN. Before you do that, I would like to ask the point you make is that the canvass must be made from the returns by the county clerk?

Mr. SMITH. Yes.

Mr. FELLOWS. Unless it is apparent there is an error, and then the error must be corrected.

Mr. SHIELDS. From what?

Mr. FELLOWS. The inspectors themselves may be required to correct it.

Mr. SHIELDS. What data can they use at that point to make the correction?

Mr. SMITH. I am going to read the statute, and then it will show itself. You do not have to take anyone's word for it. I want to call your attention to the fact that they were the returns compiled by the county clerk. You will note in their testimony there was a good deal of exception and complaint made to the fact that the county clerk opened the returns sent in from the various precincts of the county. He does that for the purpose of tabulating the vote and having it ready for the board of canvassers. That is primarily the purpose. It is done in every county in the State, except, as Mr. Carney says, his county does not follow that practice, and yet he is complaining because those returns are sent to the county clerk. They are sent in a big envelop, larger than that book, directed to the county clerk. The mailman brings it in to the county clerk. It is in his mail, and he takes his opener and opens that envelop, and it proves to be the returns, and I want the committee to notice he files it in his office, and when the record is filed in the county clerk's office it is a public record. That was a very heavy election. There never has been in my recollection and the recollection of my friends—and they know more about it than I do—an election as heavy as that, as complicated, or when the returns came in as slow. A good many of them did not get through until the next morning some time, but on the morning of the 8th they were all down there in the office of the county clerk or the judge probate. The judge probate must preserve his inviolate. No one has access to those except the board of county canvassers, and there are two sets sent up from the precinct, and the board of county canvassers must canvass the votes compiled in the county clerk's office, where they are a public record.

Mr. FREAR. Let me ask a question here in response to a question asked a few moments ago. There is nothing in the statute that requires those returns to be opened by the full board?

Mr. SMITH. No.

Mr. CARNEY. That must be determined by the statute.

Mr. FREAR. There is nothing that indicates it in the statute itself.

Mr. SMITH. The county clerk must file it in his office. They held the election on the 5th and on the 6th they completed their returns, some as late as noon, and on the 7th day the returns were all in the county clerk's office.

Now, then, counsel says the report down there was that I carried Eaton County by 1,027, and the record shows that Mr. Nichols, who was county clerk at that time, stated that fact, but Mr. Robinson, the chairman of the Democratic committee, went in there at noon with Mr. Soyars, one of the attorneys, or a gentleman who was very active in this case for my friend, the contestee, and at noon on the 7th day he looked over and tabulated those returns, and I had 912. That is the return of the precincts of my county. That was the return made by the board of county canvassers, and that return has never been changed in that county one vote from that time; and if Mr. Carney claims the benefits of the newspaper reports, he is entitled to them, but those reports never try an election case.

I know in one county it was claimed the vote for me was something like 238, and one paper said, "Why are you claiming 238 votes? You only have 70." That ap-

peared in the Courier. I was not responsible for the claims they were making. I am no prophet or a son of a prophet. I made no predictions. I would sooner quit this contest than have my good name blemished or my character tarnished by the fact that I had done an improper thing, and I do not ask my friends to do anything improper, and, gentlemen of this committee, it will be my sole effort to represent that district to the best of my ability, and when I quit it my children will never have an apology to make for me, and if in their childish simplicity they walked across the courthouse corridor, in the presence of the Democratic county committee, with a little tabulated statement in their hands, for that is the proof, it is a matter that no one can magnify into importance. I can not see why they think there is importance in such a small matter as that, and my daughter was sitting in the county clerk's office, and he says I did not put either one on the stand. I ask him now what I would have put them on the stand for? I want to stand on the justice of my claim. The voters of my district have elected me by a majority honestly cast and honestly counted, and there is nothing tending to show a vote that a man was not entitled to cast that he did not cast, and if you give me the benefit of that rule those two precincts can not be considered.

The contestant simply wants them because the boards of the precincts there did not follow out the strict letter of the Michigan statute, and I claim you are not bound—and that is by high authority, and I do not have to quote it to you—you are not bound by the statutes or decisions of any court. I will read just one little item here: "But if it is true that courts must sometimes be compelled to confess themselves powerless in the face of rigid rules and precise technicalities, such is not the unhappy state of this House of Representatives. There is no power lodged anywhere which limits this discussion and authority, except the Constitution and its sense of right. Prejudice may color judgment and want of wisdom may make those decrees unsound, but it is never without power to do what is right within its wisdom." (2d Hines, sec. 1122.) I read from Payne on Elections: "All our election laws must necessarily be administered by men who are not familiar with the construction of statutes, and all we have a right to expect is good faith in their acts and a substantial compliance with the requirements of the law."

Mr. CRISP. You started out awhile ago by stating that in one precinct the normal Republican vote was from 90 to 102 and the Democratic normal vote about 50, and that the election managers did not accept the memoranda. I would like to know how they finally declared that vote.

Mr. SMITH. I am very much obliged to you for calling my attention to it. I overlooked it.

Mr. CRISP. You started out on that, but did not finish.

Mr. SMITH. Well, I started to read this law also—the declared vote under the law. I got on the fact that those returns had to be compiled in the county clerk's office, and there is no venality in the fact that the returns were taken to another office for the purpose of computing them. Now, we will go back to the precinct where they corrected them—the precinct in Battle Creek. I will read the law which tells how they shall canvass the vote. I read from the Election Laws of the State of Michigan (sec. 3665, on p. 82), as follows:

(239) SEC. 3665. (Sec. 4.) The said board shall then proceed without delay to canvass the return of votes cast for all candidates for office voted for and all other questions voted on at said election, according to the returns filed in the office of the county clerk by the several boards of election inspectors of the various voting precincts in the county, and the returns or tally sheets filed with the board of canvassers by the central counting board in counties where a central counting board is provided for counting the ballots cast in said county or any part thereof in lieu of their being counted by the election inspectors of the voting districts. If it shall be found, upon the convening of said board of canvassers that the returns from any of the boards of election inspectors of the several election districts, or the returns of such central counting board are missing, incomplete, or incorrect, or for any other reason it is found necessary, then said board of county canvassers shall have power to adjourn from day to day until said returns shall have been procured or corrected. Said board of canvassers are hereby empowered to summon the person or persons having the boxes containing the ballots cast at such election and the keys and seals of said boxes, or having such returns or the poll books or tally sheets used and made at such elections, to bring said boxes, keys, seals, returns, poll books, and tally sheets before said board and said board of canvassers are authorized to open said boxes and take therefrom any books or papers bearing upon the count and return of the election inspectors of such election districts or the returns of such central counting board, but they shall not remove or mark the ballots therein. Said board of canvassers may summon such election inspectors, or central counting board, before them, and require them to make correct returns in case, in its judgment, after examining such returns, poll books, or tally sheets, the returns

already made are incorrect or incomplete, and they shall canvass the votes from the corrected returns. When the examination of such papers is completed the same shall be returned to the ballot boxes or delivered to the persons entitled by law to the same, and the boxes shall be locked and sealed and delivered to the legal custodians thereof. When said canvass shall have been finished, the said board of county canvassers shall prepare a statement setting forth their findings in the premises, and giving in detail the number of ballots cast for each candidate and the result of the votes cast on all other questions voted on at said election. They shall certify thereto, under their hands, and the seal of the circuit court of the county. It shall also be the duty of said board to declare the result of the election for county officers and members of the legislature, when the county alone constitutes one or more senatorial or representative districts, and to publish said result and a statement of votes cast, within thirty days after said election is held, in at least two newspapers printed and circulating in said county."

Mr. SMITH. In the first instance, they must bring up the ballot boxes and the keys and the various paraphernalia and the board itself can correct them if they can do it from memoranda found in the boxes without taking out the ballots. In this case the ballots were rolled up and tied with a string. If the ballots had been loose you can see that a different rule ought to apply than if they were rolled up and memoranda made on the back; but the latter was the situation in this case, and thus they could correctly and accurately and with certainty determine what the vote was inside. Then in justice no one was hurt when they took that memoranda. And the board itself can correct them if they can do so from memoranda in the boxes without taking out the ballots. In this case the ballots were rolled up and tied with a string. If the ballots had been loose they might have counted them, but the rule ought to apply just the same where they are rolled up. If they are rolled up there should be a memorandum in the box by which they could correctly, accurately, and with certainty determine what the vote was. The law says that they can summon in the inspectors, who shall make corrections, if in their judgment the returns are incorrect or incomplete, and they shall canvass the votes from the corrected returns.

"When the examination of such papers is completed the same shall be returned to the ballot boxes or delivered to the persons entitled by law to the same, and the boxes shall be locked and sealed and delivered to the legal custodians thereof. When said canvass shall have been finished, the said board of county canvassers shall prepare a statement setting forth their findings in the premises, and giving in detail the number of ballots cast for each candidate and the result of the votes cast on all other questions voted on at said election."

Now, the contestant says this precinct should be thrown out because John Nichols was there assisting in the election; but John Nichols says that he never asked any man to vote for me and that he was not around the polls—

Mr. CARNEY (interposing). You don't mean that the testimony shows that?

Mr. SMITH. Yes, sir.

Mr. CARNEY. No; you are mistaken about that.

Mr. SMITH. Well, if I am mistaken I am glad to have the correction, but I will show you that, that he never asked a man to vote for me. That is what I say. He was interested in my election, but he was not around the polls that night. After the polls were closed he went home and went to bed.

The statute continues (reading):

"They shall certify thereto, under their hands, and the seal of the circuit court of the county. It shall also be the duty of said board to declare the result of the election for county officers and members of the legislature, when the county alone constitutes one or more senatorial or representative districts, and to publish said result and a statement of votes cast, within 30 days after said election is held, in at least two newspapers printed and circulated in said county."

Now, that board was composed of three men. I am not saying that they should not be partisan, but I will trust my legal rights to a Democrat just as quick as I would to a Republican. That is all right, but my friends stand here and say that that rock-ribbed State of Michigan gives them no show in an election. I will only say in relation to that that I think the Democrats have gotten their share. Anyhow, the Republicans have not. Roosevelt carried my district in good shape, and they carried the State by 3,000. They have a governor up there who was elected over both Republicans and Progressives. He is representing that State at the present time. There are two Republican senators representing this district, together with one Democrat and one Progressive, and out of their numbers in the legislature there were only two Republicans, four Democrats, and one Progressive. How many more do you want? In my own county they had a reasonable representation. They always get a good representation, and they have got it now. They had two members on the board of canvassers in Eaton County, where we are reading now, and they had the chairman.

They have had the sheriff, who served two terms just finished, a splendid man, a Democrat, liked by everybody, and prior to that Mr. Hill, who sent a telegram here, was sheriff of the county. Mr. Ells was a Democratic sheriff of the county. Mr. Huber and Mr. Jones have been treasurer of a village down there on the Democratic ticket. They get their fair representation. They do not say that they are foreclosed or shut out; they just make that statement for buncombe.

Mr. ELDER. The way I look at it I would not feel that their argument there cut any figure with me. I do not blame you for answering it, since they have made the statement.

Mr. SMITH. Thank you, Mr. Elder. I am glad that you agree with me on that.

Mr. FRENCH. Right at that point Judge Crisp asked a question—and I think the other members of the committee understood it—with reference to why those ballots were not included in the vote of the precinct at first and counted by the board of canvassers. Why was that?

Mr. SMITH. Simply because they were forgotten, left out by mistake when the vote was tabulated.

Mr. FRENCH. They represented, then, votes for Democrats and Republicans, and somehow the precinct officials in totaling up left them out of consideration entirely.

Mr. SMITH. Yes, sir.

Mr. FRENCH. And then, when the returns came to the board of canvassers, they noticed these votes had been left out, and they took the straight Republican votes and added them to Mr. Smith's total, and they took the straight Democratic votes and added them to Mr. Carney's total. How much did that increase the vote?

The CHAIRMAN. It increased Mr. Smith's vote 66 and Mr. Carney's vote 38.

Mr. FRENCH. And the contention is that they should have been counted by the local officials before the count was over, and that the memorandum from which this correction was made was not, as a matter of fact, a memorandum which should have been used, by law.

Mr. FREAR. I do not quite understand the statute that you have read here, and that I read myself. It says "any papers" may be considered by these canvassers. That is something unusual in my experience. Does that contemplate a paper of this kind?

Mr. SMITH. Oh, no; it just happened to be put in there. The law says: "Take therefrom any books or papers bearing upon the count and returns of the election inspectors of such election districts or the returns of such central counting board, but they shall not remove or mark the ballots therein."

Mr. SHIELDS. My opinion is that that means this tally book that should have been in there.

Mr. CARNEY. It means any book or paper that should be in there.

Mr. SMITH. Now, these 6 or 7 ballots that were put in by Mr. Nichols were put in in the presence of the Democratic challenger, and he had nothing to do with the ballot except to receive it and deposit it in the box and call out the name of the voter. Now, after the board of canvassers over in Calhoun County had signed the returns, the contestant went over there the next day and announced to them that they had exceeded their authority. Then I received word that he had been there and was notified to come over. I went over there, and after looking at the statute the chairman says in his testimony he was satisfied a mistake had been made. Then I said that under the statute the only thing to do was to send for the board of election inspectors, as the law provides in the second clause. He says in his brief that they changed the returns at my personal request, but all that I asked them to do was to send for the inspectors.

The inspectors came up there and they were given so many minutes to correct those returns—the inspectors. The rule was laid down that nobody should say a word in discussion of it or argument of it. He said: "We don't want to hear any arguments; open the box." They opened the box and then he said to the inspectors, "Can you correct those returns without touching those ballots? The ballots must not be taken out of the box; is there anything in there that you can correct?" The gentleman that made this memorandum said, "Yes, I made a memorandum that night, and if it is in there I can correct them." Then he said, "Don't touch the ballots," and he reached down in there and said, "Here is a memorandum," which was given to this gentleman, and he went into the other room and in about 20 minutes or more came back, and with nothing to aid them but the tally sheet, which was informal and incomplete and had only 31 votes on it and they were split ones—they made up their report.

Mr. ELDER. Did they count the ballots afterwards?

Mr. SMITH. No; we offered to count them, but they refused.

Mr. CRISP. Wasn't there some testimony as to a discrepancy in the size of this paper?

Mr. SMITH. That night the city clerk at this polling place had brought in a sheet with all the names of candidates down on it for convenience. There were two clerks there keeping track of it, and they used that large sheet there. That is the one that the judge was examining the witness about. That was the tally sheet that they had used on that night. Our election law does not provide for any formal tally sheet. The law requires that a tally must be kept, but it does not say what the tally sheet shall consist of. There is no tally sheet furnished by law, but the clerk brought one down there with the names on it, and they figured on that awhile—that is a different one from the one that this banker had making his plans on. There were two papers, and when they got it corrected the chairman and the rest of them signed a unanimous report. I do not know whether I got 23 or 13 or 7 or 8, or whether I got any over there.

Mr. FREAR. Were these separate ballots eventually counted for both candidates?

Mr. SMITH. Yes, there is no question but what the ballots were all finally accounted for.

Mr. FREAR. The board eventually put them in the count?

Mr. SMITH. Yes.

Mr. FELLOWS. In order that you may get that clear, the inspectors from that precinct made an amended return, which will be found on page 149 of the record. When they came down the second time—at the first time Mr. Fred, who made this memorandum and put it in the ballot box, was not present—the second time they came down they made a further certificate, which is found on page 150.

Mr. ELDER. Had the contestant refused to have the ballots counted?

Mr. SMITH. Yes; owing to the condition of the box. It was at the second opening of the box that the inspectors came, but I was not permitted to say a word. I did not have to say anything, but I saw the box at that time, and this trunk, or something or other, had fallen down on it and smashed in the lid a little bit. Between the first time and the second time they had never asked to have the ballots counted. The ballot box shows that it had been dented in on the top. The question was not asked whether that box was in the same dented condition at first, but what harm would that do anyhow? Why should that prevent anyone from counting the ballots? There was an effort made up there to get me to file a petition for a recount. Down here that seems not to be the law. It is submitted that I could not do that, and I can see from the amount of legal lore that I have—it has been a good while since I was at the wheel—but I could read that.

Mr. FREAR. What was the difference in the vote by reason of the addition of these ballots?

Mr. SMITH. A gain of 28 for me.

Now, I want to say in regard to this Winsor ballot, which they ask to have thrown out under the statute, that that does not agree with my sense of right and justice. The ballot in this case was handed to the voter by the proper election official; it had the voter's initials on it; it was initialed at the time it was handed to him to vote; it was initialed when he went into the booth to mark his ballot; it was initialed when he voted it, when the inspector of elections put it into the ballot box. It was initialed all the way through, but the inspector that put it in the box, contrary to law, tore off the corner and also tore off the part upon which it was initialed. But the voter had nothing to do with that. The ballot was initialed, and our supreme court has been on both sides of that question, and in the Horning case (94 Mich.), I think it is, they said that the place on the ballot where the initials should be placed is directory only. That is according to common sense, and would agree with a man's sense of right. But they say that that decision was under a different statute. I do not know if we can say that that was the condition of the law at that time, but the sense of justice, the sense of right is there just the same. But since the supreme court has taken two sides on that question—and I quote a decision here from Justice McGrath, which would allow them to do what was right in that case, and I think that is the true rule of law before this committee—since the supreme court has decided on both sides of the question, and practically overruled themselves, they are not going to be outraged if this committee comply with the rules of law and count them good honest ballots.

The CHAIRMAN. Which way did they decide the last time?

Mr. SMITH. The last time they threw them out. But that was purely on the ground of the statute, and you are not, of course, bound to follow the statute.

Mr. FREAR. In the last case where the decision was rendered did the facts in that case show that the initials had been placed upon the ballot?

Mr. SMITH. Yes.

Mr. FREAR. But in the wrong corner.

Mr. SMITH. Yes.

Mr. SHIELDS. When they were counted there was no initial on the ballot, while in the former case the initials were on the ballots when they were counted.

The CHAIRMAN. I want to ask you about the precinct where they permitted two outsiders to move the ballot box and empty the ballots out on a table and count them. Why was that?

Mr. SMITH. Because the ballot box became full, and they had no other box that they could use, so they emptied the box and proceeded to count these ballots. In some of the cities in Michigan it is provided that they may have a 2 o'clock count, although that was not the case here. My record shows that they counted those ballots 20 feet away from where the voters entered the polls. Of course when they came in they might stop and look on. In that case every vote was counted that night before the polls closed. There is no question but that every man entitled to vote had voted and that the vote was correctly counted.

The CHAIRMAN. Does the record show how many votes were counted by those two parties?

Mr. SMITH. Yes, but not as they were voted.

The CHAIRMAN. How many were counted?

Mr. SHIELDS. There were 99 counted after the polls were opened, and after the count started, at 2 o'clock, and I think 140 after that.

Mr. CRISP. Is that customary?

Mr. SMITH. Yes, except in the city of Detroit, where they have a 2 o'clock count by law.

The CHAIRMAN. Now, here are these two men with this ballot box. They throw these ballots out on the table—two disinterested parties—and proceed to count them. There are people passing by who could see that count, and after they had seen the count they could go out on the street and tell what it was. What do you say about that destroying the secrecy of the ballot?

Mr. FREAR. That would be true in the city where they have the 2 o'clock count, too, would it not?

The CHAIRMAN. No; in the city they protect the secrecy of the count.

Mr. SHIELDS. The challenger for the Democratic Party and the challenger for the Republican Party were sworn in to act as clerks, and only one member of the board counted the ballots. Mr. Huber was the only man that examined the ballots.

The CHAIRMAN. Was the board present at the time?

Mr. SHIELDS. Yes; all of the board was present.

Mr. FREAR. You say all the members of the board were present?

Mr. SHIELDS. They were all in the polling place.

Mr. SMITH. The question is, How were they to meet the emergency, the ballot box being full?

Mr. SHIELDS. They could have laid the ballots on the table and counted them afterwards.

Mr. FREAR. What would be the difference?

Mr. SHIELDS. That some one might give out the vote before the polls closed.

Mr. SMITH. The proof is that there was absolutely no information given out. That was the result of the investigation. The case of *Williams v. Sutton*, Fifty-seventh Congress, I think, is a similar one. In that case they commenced to count the vote before the polls closed, which was not held to bar the vote. Now, I am not contending that that was the best thing to do, but this was an emergency. They talked it over among themselves, Democrats and Republicans, and Mr. Ells, a gentleman who had lived there 20 years, a very prominent man, Democratic candidate for register of deeds, said that so far as he was concerned they could count the ballots, and they agreed there that no objection should be made to it. The Democrats and Republicans were both entitled to have that count, and the proof is positive that nobody was there that did not belong there.

Mr. FREAR. What is the law in regard to counting all ballots when they are taken from the ballot box?

Mr. FELLOWS. The ballots have to be counted immediately when taken from the ballot box, and the count must be continuous.

Mr. FREAR. It occurs to me that there are two phases of the proposition that have to be met.

Mr. CARNEY. This particular form has to be gone through before they can count at all, and it has to be a consecutive count and announcement made immediately upon completion.

Mr. FREAR. The purpose is to prevent, I suppose, manipulation of the ballots.

Mr. FELLOWS. There is no provision in the law which permits a 2 o'clock count. The fact that they do permit it in the city of Detroit would indicate that the 2 o'clock

count is not against public policy, as long as there is no provision for their procuring another ballot box.

The CHAIRMAN. Can you tell us what the law is that provides for a 2 o'clock count in the city of Detroit?

Mr. FELLOWS. It is not in the general election law. It is a special act.

Mr. FRENCH. Let me ask you a question there, Mr. Smith. Admitting now that this ballot box was full, was there any provision of the law by which some other alternative could have been produced? Is there any provision for another ballot box?

Mr. CARNEY. Our supreme court has decided that you can use two ballot boxes, but there is no provision in the law covering that.

Mr. FRENCH. I suppose these election officials out in that precinct were not familiar with the supreme court decision, but they did have the law before them. I want to know whether or not there is any provision in the law that would have directed them to substitute another box, instead of following the procedure that they did follow.

Mr. SHIELDS. The law simply provides that they shall provide satisfactory boxes for voting.

Mr. FRENCH. Who shall do that?

Mr. SHIELDS. The board of inspectors of elections.

Mr. FELLOWS. They had provided a satisfactory box but it was not large enough.

The CHAIRMAN. If it was not large enough it was not satisfactory. It could not be satisfactory if it would not hold the ballots.

Mr. FELLOWS. There was another precinct in which a similar situation arose, and in that case they went out and got a shoe box and voted in that. Mr. Carney carried the precinct.

Mr. CARNEY. Don't you think they would be justified in getting another ballot box if that was not large enough?

Mr. FRENCH. What I am trying to get at is whether or not there was a way under the statute to meet the situation after the box was full.

Mr. CARNEY. The statute is plain enough that they should provide another box. They should have had it when they started. I do not think the vital thing is that one box was filled up. I would not object at all if when the emergency arose they had provided some other means of caring for those ballots. Our objection is that the way they did it, conducting the count in that way, was absolutely illegal. They should have protected the ballots.

Mr. FREAR. Your contention is that they did not use the best method of procedure.

Mr. CARNEY. They used the very worst procedure.

Mr. SHIELDS. Paragraph 173 of Exhibit 67, which you have in your hand, is the statute you are asking about, also paragraph 145.

Mr. FRENCH. Mr. Fellows has said that in another precinct where the results were reversed, favorable to Mr. Carney, the judges used a shoe box. What kind of a shoe box was it, wood?

Mr. FELLOWS. Yes.

Mr. FRENCH. Are your election boxes up there made of wood?

Mr. CARNEY. Wood, tin, anything.

Mr. FELLOWS. The ballot box in this precinct was a tin can with a roller that they rolled the ballots in. It was a patent box.

Mr. FRENCH. In this precinct where the election officials had failed to anticipate such a large vote, and where they furnished a wooden box afterwards, did they do that in compliance with a provision of the law, or did they do it simply to meet the situation?

Mr. CARNEY. No; they did it to meet the situation.

Mr. SMITH. The law says that the ballot box shall have a lock and seal on it, which this box did not have.

Mr. FRENCH. There was no lock or seal on this shoe box?

Mr. SMITH. No.

Mr. CARNEY. There was no opening to it at all. Instead of being locked the lid was nailed down.

Mr. SMITH. There is no statute in terms prohibiting the adjournment of the board after closing the polls or before completing the canvass. All statutes must be reasonably construed. It is not impossible that some exigency might arise requiring the cessation of the canvass for a brief period during the canvass of the vote. If the election laws as to adjournment are held to be so far mandatory that when an adjournment is had it renders the poll void, then we call attention to the township of Texas, where contestant received a plurality of 11 votes, and where the board adjourned for supper after the polls closed at 5 o'clock (record, p. 495). Also the first ward of the city of Albion in Calhoun County, where contestant received a plurality of 27 votes (record p. 469), where the board adjourned at 10.30 o'clock p. m. and went home,

and reconvened the next day after election at 9 o'clock and filled in the returns (record, p. 469), in which a discrepancy appears between the votes of some of the candidates as written in and set down in figures (record, p. 472). Also the second ward of Albion, where contestant received a plurality of 47 votes (record, p. 478), where an adjournment was had at 11 p. m. and the books were taken to the office of one of the inspectors and kept there until the next morning at 11 o'clock, when they reconvened and made up their matters in the office of Mr. Laborteau. Also the fourth ward of Albion, where contestant received a plurality of 75 votes (record, p. 486), where a similar adjournment was had until 9 a. m. the next morning, when the board reconvened, opened the ballot box, took out the books, and completed their statement.

There are other discrepancies that I could cite if I had the time, but those are all that my limited time will permit. I thank the committee very kindly for their attention.

The CHAIRMAN. We will give you all the time you want. We want the facts in the case.

Mr. SMITH. I will hand them to my associate, then.

Mr. FRENCH. I would like, Mr. Chairman, right in connection with the election board furnishing another ballot box, to have inserted the section of the Michigan laws which provides for each township having a ballot box and defining the kind of box. I would like to have that section inserted.

Mr. SHIELDS. It is section 144, page 45, of the pamphlet, which is an exhibit in the case.

Mr. FRENCH. I would like to have that printed right at this point.

The following is the section referred to:

"144. There shall be provided and kept by the township clerk in each township, at the expense of such township, and in each ward or voting precinct of any city by the city clerk or recorder, at the expense of the city, one or more suitable ballot boxes, with lock and key, which ballot box shall have an opening through the lid of the proper size to admit a single closed ballot, through which each ballot received shall be passed into the box. He shall also furnish a township or ward election seal, which shall contain the name of the township or ward and the words "election seal" around the margin thereof, and such other words or device thereon as the township board of the township or common council of the city may prescribe."

The CHAIRMAN. We will now adjourn, gentlemen, to meet at 10 o'clock to-morrow morning.

COMMITTEE ON ELECTIONS No. 1,
HOUSE OF REPRESENTATIVES,
Tuesday, December 9, 1913.

The committee met at 10 o'clock a. m., Hon. J. D. Post (chairman), presiding.

The CHAIRMAN. Proceed, gentlemen.

Mr. SMITH. I ask that my counsel be heard at this time.

STATEMENT OF MR. GRANT FELLOWS, ATTORNEY FOR CONTESTEE.

Mr. FELLOWS: If the committee please, I think it is a matter of indifference to the contestee as to whether this committee follows the Michigan statutes and the Michigan decisions or not, or as to whether the committee views the provisions of the election laws of the State of Michigan as mandatory or as directory purely. I understand that it was urged that the statutes of the State of Michigan and the construction of the Michigan courts thereon should be absolutely and literally followed by this committee, and that Congress in the past had not deviated from State construction of State statutes. I understand that a State election statute performs a twofold function: It is the machinery used by the electors of the State to select the officers necessary to carry on and manage the State government.

It is also the machinery used by the electors for the purpose of selecting their Representatives in Congress. Therefore a State statute performs the dual function of discharging a State duty and at the same time discharging a national duty. Its construction as applied to the election of State officers, I apprehend, is to be controlled by the State courts. Its construction as applied to the election of Federal officers must of necessity rest with the Federal authority. The House has the constitutional power and prerogative of being the sole judge of the qualifications of its own Members. That is a power that is not controverted here, and can not be controverted, but the thing that I want to impress on you first is this: That with an election statute which

performs the dual function of regulation of a State duty as well as a national duty, in State elections its construction is for the State courts, and in the discharge of its functions as to national officers the construction of it must fall to the Federal authority, although the Federal officers passing upon that statute may, if it appeals to them, follow the construction placed upon it by the State court. I am not saying that this committee has not the right to follow the construction placed upon the Michigan statute by the Michigan court if it appeals to them as the correct construction to be placed thereon. As I said before, I think it is a matter of indifference to the contestee as to whether the statutes are literally construed or not, whether you follow the Michigan holdings or the precedents of this committee.

The CHAIRMAN. Would not your client be in a very bad situation if we followed the ruling of the Michigan Supreme Court in the five precincts——

Mr. FELLOWS (interposing). And did not follow it in the other precincts? Yes. But if you follow it in those precincts there are other precincts which Mr. Carney carried with a much larger majority and if you do that it will leave Mr. Smith a majority of something like 400 instead of 116. I am neither asking nor suggesting that you follow their contention solely as to the precincts which they claim it ought to apply to, because when we come to apply the rule to those precincts it must also be applied to the other precincts, which they decline to do.

The CHAIRMAN. What are those precincts?

Mr. FELLOWS. I will take them up as I go along.

The CHAIRMAN. All right; I do not want to interrupt you.

Mr. FELLOWS. And I will apply the rule to each separate precinct. Now, the township of Climax is made something of in the contestant's notice of contest. It was insisted that he should have credited to him something like 30 more votes than were credited to him in the returns.

The CHAIRMAN. You have agreed upon that, have you not?

Mr. FELLOWS. Yes, sir. But I want to call the attention of the committee to the situation in Climax so that you will see how that applies to Battle Creek because the same situation arose in the precinct of Climax that arose in the precinct of Battle Creek.

Now, there are returned to the county canvassing board three different papers; that is, they are returned to the board either directly or through the county clerk. Those three papers are: First, the poll book or poll sheet which shows the names and therefore the number of men who voted. There is also returned a statement of the votes, which is the return of the local board of inspectors and which returns the number of votes given to each person, and the number cast for each office. There is also returned——

The CHAIRMAN. Have you gentlemen a form of the tally sheets for the benefit of the committee?

Mr. FELLOWS. I understand they are with the Clerk of the House.

Mr. SMITH. They were all introduced, against the objection that they could not be taken away, but the clerk consented to have them sent here upon my assurance that I would have them returned when the committee was through with them.

The CHAIRMAN. Go ahead, Mr. Fellows.

Mr. FELLOWS. Now, in addition to those two papers which I have mentioned there is also returned the tally book or tally sheet. In some elections the tally sheet is not returned. For example, it is not returned in a local-option election, so that there is nothing before the board that canvasses that vote to show whether a mistake has been made or not, while in other elections the tally book is returned.

I will not take up the Battle Creek precinct now, because what was true in Climax was true in Battle Creek. The poll book which was returned showed that a certain number of men had voted in that district. The tally sheet which was returned showed the number of split votes. The return proper, or what we call the "statement of the vote," showed that a considerable less number were returned than the poll book showed had been cast, and so in the township of Climax we simply said: "Whatever the box shows, take a recount of it. The board of inspectors are here, and they have the ballot box here, and we concede that there shall be a recount." And upon that recount Mr. Carney gained, I think, 11 votes. I will take up Battle Creek later, but that shows the attitude of the contestee to the contestant. When the question of Battle Creek was taken up, it was urged that there was no power in the statute which would permit the correction of a palpable mistake. You can see that the mistake was apparent upon the face of the papers which were filed with the clerk, or filed with the board, because here was the poll book showing the names and the number of men who actually voted; here was the statement of the returns showing that the number was shy something like 250. In Climax it was considerably less than that, from governor down. The votes that were returned were from 114 down, so that it

was apparent that a mistake had been made. They had the tally sheet before them, which showed that there were returned only split votes, so that there was a palpable error, a palpable mistake, before the board of county canvassers when they opened those returns.

I shall take up the question of Battle Creek later, but in Climax, as I say, we simply said, "Whatever the ballots show." That is exactly what we offered to do in Battle Creek, and that was declined. It was not only insisted that we could not recount the votes, but that the board was absolutely powerless to correct a palpable error.

Now, the next precinct that is urged is the third precinct of Charlotte. As I remember it, the third precinct of the city of Charlotte is not mentioned in the notice of contest. I shall refer to that again when we come to the question of whether Winsor should be considered here, and if it is considered what other rule should be applied.

Mr. SHIELDS. Pardon me for interrupting, but the third ward of Charlotte is specifically set forth in the notice of contest. We might as well settle that now as at any other time.

Mr. FREAR. As I understand it, and as the committee, I think, understand it, the only difference between you on that point is as to what was specifically alleged in the third ward of Charlotte.

Mr. FELLOWS. I will take that up later.

Mr. FREAR. I just suggest that to save time.

Mr. SHIELDS. All right.

Mr. CARNEY. We read yesterday from paragraph 4 on pages 7 and 8, Mr. Fellows.

Mr. FELLOWS. Yes.

Mr. CARNEY. And again on page 9, paragraph 7. Without reading the whole paragraph, after alleging certain agreements, it states:

"Various of the inspectors and other officers of said election precincts in said county of Eaton and particularly in the second and third precincts in the city of Charlotte, in said county of Eaton, on said election day, did urge upon divers and sundry voters in said precincts and in said two precincts last above mentioned the aforesaid agreement, and by such means and other unlawful means exerted on said election day upon divers and sundry voters in said various election precincts and within the railing within the voting place wrongfully, persuasive, and fraudulent means were used for and on behalf of the said John M. C. Smith, candidate on the Republican ticket in said county of Eaton."

And this issue was met directly in the answer that Mr. Fellows drew up, found on page 24 of the record. In paragraph 4 it is stated:

"And he denies that any of the board of election inspectors in any of the voting precincts mentioned in this paragraph——"

I might say that this refers to the first, second, third, and fourth wards of the city of Charlotte. Then the language of the answer goes on to say:

"Did at any time during this election enter the booths and assist in marking the ballots or in any way urge a voter to vote upon any particular ticket for any officer on the ballot."

So the issue was fairly and squarely met, and the allegations are specific.

Mr. FELLOWS. That seventh paragraph is the paragraph which charges that there was a fraudulent conspiracy.

The CHAIRMAN. What page is that?

Mr. FELLOWS. That is on page 9. It charges a conspiracy between the Progressive Party and the Republican Party that Republican doctrines should not be preached in that county and that the Progressives should not run any county ticket; that there was a fraudulent combination between the two. I think that so far as that feature of the case here is concerned, it went into the discard together with the charge that there was a conspiracy between Carney and Dingley, which grew out of the fact that Carney let Dingley have his automobile in which to ride around the district campaigning. I think both contestant and contestee put those charges into the waste basket. But whatever there is in general language charging that thing to have occurred in all the voting precincts and was a dragnet, and no specific charge was made with reference to this particular matter here. But I apprehend that this committee, in the exercise of its power, has the right to permit an amendment, or rather, Congress has that right. There must be some authority somewhere, and the propriety of permitting that I shall discuss later.

Now, let us see. There was only one man who testified with reference to this subject for the contestant and that was Mr. Mosier, on pages 46 and 47. He commenced, I think, a little earlier. I will read commencing on page 45. This is in his direct examination by Judge Adams:

"Q. Whether more than one of the inspectors in any one instance went in when a voter had applied for instructions as to the manner of voting his ballot?—A. Yes, sir.

"Q. You say they did; sometimes two of them went in?—A. Two every time.

"Q. Two inspectors?—A. Yes, sir.

"Q. Did you hear any suggestions made there that day to any voters who applied for instructions in marking their ballots, made as to who the voters would vote for?—A. I did.

"Q. What did you hear?—A. I heard Mr. Smith's name mentioned.

"Q. Who mentioned it?—A. Mr. Dunning.

"Q. When he was in the booth?—A. Yes, sir.

"Q. With the voters?—A. Yes, sir.

"Q. A suggestion was made by Mr. Dunning, who was then inspector of election, to the voter to vote for John M. C. Smith; is that correct?—A. That is correct.

"Q. Was that the John M. C. Smith who was then a candidate on the Republican ticket for Representative in Congress?—A. Yes, sir.

"Q. Did you hear any suggestion made there to any voters who applied for instructions on that day for any other candidate?—A. I did not myself."

"Q. Did any controversy occur there between you as challenger for the Democratic Party that day with reference to the manner in which the inspectors were carrying on that business?—A. We had some trouble there.

"Q. What controversy did you have?—A. I didn't think it was right.

"Q. What did you say?—A. I said it should be stopped.

"Q. What had to be stopped?—A. Soliciting.

"Q. Soliciting what?—A. Votes.

"Q. Who did you have that controversy with?—A. Mr. Dunning.

"Q. What did he say?—A. He said, 'What are you going to do about it?'

"Q. Do you know what Mr. Dunning's politics were on that day?—A. He was a Republican.

"Q. Could you see how those men who were instructed by the inspector or to whom suggestions were made that they vote for John M. C. Smith for Congressman in those booths on that day voted?—A. No, sir; I could not.

"Q. What business are you engaged in?—A. I don't know hardly.

"Q. Are you retired?—A. Yes, sir; tired.

"Q. What did you say, retired or tired?—A. Tired."

Now, upon cross-examination it became apparent from his own testimony that that occurred just once. At the bottom of the page is the following testimony:

"Q. Can you give any names?—A. No, sir; I can't give the names.

"Q. Who was the one that you said you had trouble over?—A. I couldn't tell you what his name was.

"Q. You don't know what his name was?—A. No, sir; I couldn't say what his name was.

"Q. Mr. Mosier, you didn't see anybody mark a ballot for a voter, did you?—A. No, sir; I couldn't say that I did.

"Q. Now, Mr. Mosier, did you hear either one of those inspectors ask any voter to vote for John M. C. Smith, in that language?—A. I did; one.

"Q. Who was that?—A. Mr. Dunning.

"Q. Do you remember the man's name?—A. No, sir; I do not.

"Q. Can you give the language he used to this man?—A. He says, 'J. M. C.'; that is all.

"Q. He just mentioned the name?—A. Yes, sir.

"Q. Was this about the language he used, 'How about John M. C. Smith?'—A. Yes, sir; something like that.

"Q. That is all he said?—A. Yes, sir.

"Q. That is the thing you took offense at?—A. I didn't think it was right.

"Q. That man was the one that caused the trouble when he said, 'How about John M. C. Smith?'—A. That is the time I got a little mad.

"Q. Do you remember that man's name?—A. No, sir; I can not think of his name.

"Q. Do you remember the time that occurred—was it before you went to dinner or after?—A. That was after dinner."

Now, it was taken up by Judge Adams on redirect examination and in general language an attempt was made to show that that occurred at other times.

The CHAIRMAN. Does it not show right below that that he did the same thing?

Mr. FELLOWS. Well, he attempts to give that as his testimony. I think the committee would have the right to construe his testimony, after he was called back for redirect examination, to mean that this occurred more than once, but the weight of the testimony—

The CHAIRMAN (interposing). Does he not say just below there:

"Q. State whether or not suggestions were made to all when you were present that day.—A. Do you mean those who asked for assistance?

"Q. Yes, sir.—A. All those, I think; yes, sir."

Mr. FELLOWS. Yes, sir. I say that the committee, if they take this version alone, upon direct examination, can so construe it, but I take his testimony on redirect examination in connection with his testimony on cross-examination to mean that that thing occurred but once.

The CHAIRMAN. What answer do you define as meaning one person?

Mr. FELLOWS. Well, on cross-examination, the portion I just read, beginning:

"Q. Who was the one that you said you had trouble over?—A. I couldn't tell you what his name was."

And so on down to the end of the cross-examination.

Now, my construction of that language is that it only occurred once and he became angry. As I say, taking his testimony in its entirety, the committee would be justified in construing it to mean that this occurred but once.

Mr. SHIELDS. May I ask you whence you were reading a while ago?

Mr. FELLOWS. I commenced on page 45, and the last I read was on top of page 46.

Mr. SHIELDS. May I be permitted to read the redirect examination by Mr. Adams? It is not long [reading]:

"Q. You say, Mr. Mosier, that you heard one; what do you mean by that—one who?—A. I don't remember of saying that; I meant one of the inspectors.

"Q. Did you hear any suggestion made to any of these others who applied for instructions that day?—A. The same thing.

"Q. How many different times did you hear these suggestions given to voters?—A. I couldn't tell you how many there were that asked for assistance, I couldn't give you the number.

"Q. State whether or not suggestions were made to all when you were present that day.—A. Do you mean those who asked for assistance?

"Q. Yes, sir.—A. All those, I think; yes, sir."

Mr. FELLOWS. The testimony is that there were only two men who applied for assistance that day. That is uncontradicted so far as that is concerned.

The CHAIRMAN. In ward 3 you say that only two asked for assistance?

Mr. FELLOWS. Yes, sir.

Mr. CRISP. I thought it was five or six.

Mr. FELLOWS. I want to call your attention to a distinction which the contestant has not made. They have not differentiated between assistance and instruction. A voter comes in and asks: "How do you work this thing?" if it is a voting machine; or, "How do you vote this ballot?" if it is a ballot—

The CHAIRMAN (interposing). Were there any voting machines in this election?

Mr. FELLOWS. There were some in some districts, but there is no question involving them in this case. In some districts the board is bound under the law to give instructions. If a man comes in and wants to know how to vote the ticket he is bound to be given instruction, and there is no requirement that the elector shall be sworn in order to receive instruction. If he requires assistance to mark his ballot, unless the defect is apparent he must be sworn. If he can not read the English language so that he can not understand his ballot he must be sworn. All the way through the contestant's case there has not been the slightest inclination to differentiate between instruction and assistance.

The CHAIRMAN. If a man were blind he would have to have both assistance and instruction.

Mr. CARNEY. Will you give us the section of the law on that point?

Mr. FELLOWS. I think Mr. Smith cited it, but I will give it to you again later. Now, the testimony has been cited upon this subject, commencing at page 10 of the brief for contestee, Mr. Mosier's testimony being first taken up there, and I shall ask the committee to consider it. We called everybody that was present there except Mr. Mosier. They called the Democratic challenger and we called everybody else that was present at that election and that testimony developed this state of facts: There was an old gentleman there, something past 50 years old—

Mr. FREAR. You say you called everyone who was present at that election. Of course you mean, I suppose, that you called every official who was present at the election?

Mr. FELLOWS. Yes, sir. We called the Republican challenger and every member of the board of inspectors and all the clerks; one of them, I am sure, was a Democrat. Now, the testimony is so overwhelming that while I can not say that the uncontradicted testimony shows this, yet the absolute weight of the testimony does show that this was what occurred and this was all that occurred: An old gentleman came in there and he was partially blind, I think; at any rate he was a very old man. In fact,

the two voters who were assisted—as I remember the testimony, now, though I will not be sure that this is exactly right—were both over 80 years of age. This old gentleman said he wanted to vote the Democratic ticket and for some Republicans; he said he wanted to vote for Mr. Storrs for sheriff. Mr. Storrs was the Republican candidate for sheriff.

This voter was a man living in a little town of probably 5,000 people and I have no doubt that these inspectors knew practically every man in that ward, had visited them and knew what was in their minds. Now, he said he wanted to vote for Mr. Storrs and another Republican. If there was anybody besides Mr. Storrs that the Democrats of Charlotte wanted to split their ballots on, John M. C. Smith was the man, because he had lived there all his life and they knew him. He said there was one other Republican he wanted to vote for and the inspector said either "How about John M. C." or "How about John M. C. Smith." Now, the weight of the testimony taken shows that that was about what was done and that that was about all that was done. It is urged that that ward in its entirety should be thrown out and the McQuade case is cited as the authority for throwing out that ward. I am not going to take the time to read it, but the McQuade case arose in the county of Wayne and in the township of Ecorse. In that case unauthorized people were behind the booth all day and something like 75 men had their ballots marked for them by unauthorized men. I think the testimony showed that there were something like 10 different men who came in behind the rail to help the voters and fix the ballots for them. This was soon after the Australian ballot system came into effect in Michigan. There was no authority at that time to call in these outsiders to fix the ballots for the voters. This committee can see just exactly what that would lead to if that were permitted. A vote could be purchased and delivered by the man going into the booth and seeing the ballot marked. It was so patent upon its face that the election in the township of Ecorse was an absolute fraud that the Australian ballot system, which had been introduced for the purpose of purifying elections, was declared to be likely to become a farce if such things were to continue.

That is said to apply to the election situation in the city of Charlotte, where the name of the man he wanted to vote for had slipped the mind of this old gentleman and the inspector, who knew undoubtedly who he wanted to vote for, asked him, "How about John M. C.?" That is all that occurred and the McQuade case is cited as a parallel case, when as a matter of fact something like 75 men were assisted in voting and something like 10 unauthorized men were behind the railing during the day.

Now, I want to pass next to the township of Sunfield. In that township the election machinery was entirely in the hands of the opposition to Mr. Smith and to the Republican ticket. There were three inspectors who were Democrats and one inspector who was a National Progressive. One of the clerks was a Republican. Under our law the board of inspectors consists of four members and four only, one of them being the township clerk, who acts as inspector and also as a clerk. Then in addition they add another clerk so that there may be two clerks besides the three inspectors.

Now, these three inspectors, besides the clerks, perform these functions: One man does the initialing of the ballots, another hands out the ballots, and the third man takes the ballot and puts it in the box. The fourth man, who is also the clerk, puts the name of the man down on the poll book, together with the number of the ballot given him. The other clerk does the same thing, because two poll books are kept. There is no authority in the law for more than four inspectors.

Something is said in the brief, I think, and possibly something in the notice of contest, about the inspector whose duty it was to hand out the ballots not being in sight of the rest of the board. That occurs everywhere. In other words, we will say that this table here is the booth; the voter comes in on my left side, comes down here [indicating] and the inspector hands him a ballot. He goes into the booth here [indicating], marks his ballot, passes through to the other side, and hands it to the inspector on the other side, who places it in the ballot box. The box and the ballots which are being initialed, together with the clerks who are keeping the poll books, are all on one side, while the inspector who hands out the ballots is on the other side.

Mr. SHIELDS. Do you say that is the general practice throughout the State?

Mr. FELLOWS. Yes, sir.

Mr. SHIELDS. I take issue with you on that. I never saw it or heard of it in any precinct in the State of Michigan, except in this instance.

Mr. FELLOWS. Well, the testimony shows it all the way through.

Mr. CARNEY. In only two places.

Mr. FELLOWS. Down where I live we use the voting machine and have done so for something like 15 or 20 years.

Mr. SHIELDS. Not every town manufactures voting machines.

Mr. FELLOWS. Down in my county we do not use the booth system except for certain elections where machines can not be used, and in those cases the arrangement has always been as I have stated.

Now, let us see about this man Sayre. Mr. Sayre, to begin with, was a Democrat. The other members of that board were also Democratic. The oath was administered to him and it is by reason of that oath that he is called an instructor. I insist that even upon the most favorable view that can be taken of the testimony of the contestant, Mr. Sayre was called an instructor by reason of the oath he took. He performed absolutely no function other than that of an inspector, but he took the oath of an instructor. That oath is found on page 68 of the record, and it is from that oath that he is called an instructor. I will read it:

"STATE OF MICHIGAN, *County of Eaton, ss:*

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of instructor of this election, held on Tuesday, the 5th day of November, 1912."

Now, let us see just exactly how that situation arose. Mr. Palmer, it is apparent, wanted to be out on the streets that day. Mr. Palmer was the supervisor, a man 63 years old, a very excellent man indeed, but it was apparent that he wanted to be away from the polls more or less, and so they had been in the habit—

The CHAIRMAN (interposing). What did he want to be away from the polls for if he was the supervisor?

Mr. FELLOWS. Well, the farmers were coming in then and he dealt in farm produce and he wanted to buy what they had.

Mr. CARNEY. That is not in the record, is it? You are just stating that yourself?

Mr. FELLOWS. No, sir; I am showing why he wanted to be away.

The CHAIRMAN. What is the supervisor?

Mr. FELLOWS. He is the taxing officer and he is the chairman of the board of inspectors.

Mr. SHIELDS. He is really the executive officer of the township?

Mr. FELLOWS. Yes, sir.

Mr. FREAR. What was his politics?

Mr. FELLOWS. He was a Democrat.

Mr. FREAR. So that you do not make any contention that he was trying to affect the election in any way?

Mr. FELLOWS. No, sir; not in the slightest. I want to say here and now that those men are of the highest integrity and character.

It has been said that all the election machinery in the State of Michigan has been in the hands of the Republicans. That is not true. In my county there has never been a time when our board has not been Democratic; in my town, a little country town of some 2,500 inhabitants, we have had a Democratic supervisor for 20 years.

Mr. SHIELDS. That is not in this district.

Mr. FELLOWS. No, sir; but my town runs up to the east line of Mr. Smith's congressional district.

Mr. SHIELDS. And your district is Democratic, which may have something to do with it.

Mr. FELLOWS. Well, it is just Democratic.

Mr. SHIELDS. But it is Democratic?

Mr. FELLOWS. Well, it is just.

Mr. ELDER. Well, all districts that are Democratic are just. [Laughter.]

Mr. FELLOWS. I am not going to quarrel with any member of this committee.

Mr. BORCHERS. Is it a fact that where Republicans are in the majority—that is, where they have control of the county organization or township organization—they also have control of the elections?

Mr. FELLOWS. Well, this is the situation with us: Mr. Shields's county is a Democratic county, I think, so far as the board of supervisors is concerned, and in the spring they begin to get out because, I imagine, they think their opportunities for trimming us are better in the spring than in the fall. But in my county the supervisors have been Democrats for years and they have been men of the highest type.

Mr. CARNEY. It has been a good many years since Eaton County was ever accused of anything of that kind.

Mr. FELLOWS. Well, I think there is scarcely a board there of which some members are not Democrats.

Mr. CARNEY. Name a board in Eaton County, in any district—

Mr. FELLOWS. Well, let us take the one which you have got to have thrown out in order to get a seat in Congress—

Mr. CARNEY. Are you talking in the record?

Mr. FELLOWS. Yes; I am talking inside the record. Outside of Mr. Mapes every member of the board was a Democrat. Mr. Mapes was a Bull Mooser.

Now, I want to read the testimony of Mr. Palmer. As I say, the oath was administered to Mr. Sayer. That oath is on page 68. After these various oaths had been read Judge Adams took up the examination, following the certificate on page 69. I read from Palmer's direct examination:

"Q. You were at that election as an inspector and remained on that day how long, Mr. Palmer?—A. I stayed there until about 12 o'clock at night.

"Q. You were there from the time the polls opened until 12 o'clock at night continuously?—A. No, sir; there were times I stepped out; it seemed we had one man to spare—

"Q. (Interrupting.) What do you mean by that?—A. Well, there was nothing for Mr. Hager to do when I was taking the tickets and putting them in the box, so when I wanted to step out for any reason he would take the tickets and relieve me, and if he wanted to step out I would take the tickets and put them in the box and relieve him.

"Q. So one inspector handed out the tickets?—A. Mr. Bacon, the justice of peace, marked the corner of the ballots and handed them to Mr. Sayer and he was in front of the booth passing those tickets out to the voters, and as the voters came through the booth I took the tickets from them and deposited them in the box.

"Q. Mr. Sayer was the instructor?—A. Yes, sir.

"Q. So that you had three inspectors at that election and an instructor besides the clerk?—A. Yes, sir; we had two clerks.

"Q. Who did you say was the clerk of that township at that time?—A. H. H. Mapes.

"Q. So Mr. Mapes did not act as inspector, he was a clerk there to that election board?—A. Yes, sir.

"Q. Well, now, as I understand it, you acted as an inspector and Dennis A. Hager acted as an inspector?—A. Yes, sir.

"Q. And Frank H. Bacon acted as an inspector. Did anybody else act as an inspector?—A. I don't think so.

"Q. So you had then three inspectors who acted—three men who acted as inspectors, I will put it?—A. Mr. Bacon handed them out to Mr. Sayer.

"Q. Mr. Sayer was not an inspector but an instructor?—A. Yes, sir.

"Q. He was sworn in as an instructor?—A. Yes, sir.

"Q. And yet he handled the ballots?—A. Yes, sir.

"Q. What did Albert Sayer do there with those ballots; just explain that?—A. He would take 25 at a time from Justice Bacon—"

Now, that is the law. The man who initials the ballots must keep 25 ahead on the table of the inspector who hands them out. The answer continues:

"He would take 25 at a time from Justice Bacon and go out in front of the booth where the voters entered in the gate, between the front gate and the booth, and he would pass the tickets.

"Q. Then the voter would go into the booth perhaps and mark his ballot?—A. Yes, sir.

"Q. And then what was done with the ballot?—A. The voter would enter into the booth on Mr. Sayer's side of the booth and would come out on our side, and I would take the ballot and deposit it in the box.

"Q. How many booths did you have there that day?—A. Four or five.

"Q. Mr. Sayer, then, in passing the ballots to the voters was not in sight of the other members of the board, was he?—A. No.

"Q. In other words, the booths were between Mr. Sayer, when he handed those ballots to the voters, between those voters and yourself and Mr. Bacon?—A. Yes, sir.

"Q. And those booths were so high and so long that a view of yourself and Mr. Bacon was cut off from Mr. Sayer when Mr. Sayer passed these ballots to the voters?

Mr. MAYNARD. I object to that as leading.

"Q. Is that true or not?—A. Yes, sir; that is true.

"Q. Well, when you went out at any time or times that day, when you did leave the voting place, who took your place?—A. Mr. Hager.

"Q. When you were there what did Mr. Hager do?—A. Well, Mr. Hager part of the time would step out on the street, and part of the time he would sit around and talk.

"Q. When you were performing the duties you say you performed, Mr. Bacon also being there, Mr. Hager didn't do anything, did he?—A. No, sir.

"Q. Was Mr. Sayer, when he passed out these ballots to the voters, within or without the railing?—A. He was within the railing."

Now, on page 75 is the testimony of the same witness under cross-examination by Mr. Frankhauser.

"Cross-examination by Mr. FRANKHAUSER:

"Q. You had been election inspector at a good many previous elections?—A. Yes, sir.

"Q. You are supervisor of the township of Sunfield and have been for some time?—A. Yes, sir.

"Q. Your township is normally quite strongly Republican?

"Mr. ADAMS. I object to that as irrelevant and immaterial and too indefinite.

"A. It is considered so.

"Q. Even at the last election it went Republican?

"Mr. ADAMS. We object to that as irrelevant and immaterial and not the best evidence.

"A. I think the report shows it went Republican.

"Q. Do you remember how many votes Mr. Carney received there?

"Mr. ADAMS. We object to that as irrelevant and immaterial and not the best evidence.

"A. I do not ; no, sir.

"Q. Now, as a member of that board—you have been elected supervisor on the Democratic ticket in that township?—A. Yes, sir.

"Q. Every time for a number of years?—A. Yes, sir.

"Q. Now, this inspector, Mr. Bacon, was a Democrat?—A. Yes, sir.

"Q. He died very soon after the election?—Yes, sir.

"Q. The fact was that he was in very poor health at that time?—Yes, sir.

"Q. That is why you proposed he should go home and you would take his place?—A. Yes, sir.

"Q. Mr. Sayre—is he also a Democrat?—A. I think so.

"Q. And supported the Democrat ticket?—A. I think he is a Democrat?

"Q. Mr. Bacon was a Democrat and supported the Democrat ticket?—A. I don't know how they voted?

"Q. Just what you know from your observation among men?—A. He was a Democrat.

"Q. A majority of the board of inspectors were Democrats?—A. Yes, sir.

"Q. Mr. Mapes—he was what is called a third party man, a Bull Mooser?—A. I think so.

"Q. As far as you were concerned, Mr. Palmer, your actions there were in every regard in favor of an honest election?—A. Yes, sir.

"Q. I ask you whether Mr. Carney got credit for every vote that was cast for him, as far as you know?

"Mr. ADAMS. I object to that as irrelevant and immaterial.

"A. As far as I know, he did.

"Q. And John M. C. Smith got credit for what was cast for him, as far as you know?—A. Yes, sir.

"Q. As far as you know there was nothing occurred there that affected the result of the election for Member of Congress?

"Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial.

"A. No, sir.

"Q. Did you swear in Mr. Sayre because you supposed you had a right to swear in such an officer?

"Mr. ADAMS. I object to that as irrelevant and immaterial.

"A. Yes, sir.

"Q. You had done that at previous elections?

"Mr. ADAMS. We object to that as incompetent and immaterial.

"A. Yes, sir.

"Q. And you did it to facilitate and help the election along; that was your intent and purpose?

"Mr. ADAMS. We object to that as irrelevant and immaterial.

"A. Yes, sir."

And then they go on to the question of adjournment.

Now, let us take up Mr. Sayer on page 433. I will read the direct examination, so that it may be before the committee:

"Direct examination by Mr. MAYNARD:

"Q. Where do you reside?—A. In the township of Sunfield, Eaton County, Mich.

"Q. Were you present at the general election held in the township of Sunfield on the 5th day of November, 1912?—A. Yes, sir.

"Q. Did you officiate upon that election board at that election?—A. Yes, sir.

"Q. How did you come to serve on the board?—A. Well, I was there when they opened up and they named me; elected me as one of the inspectors, or instructor, they call it.

"Q. That was done by the vote of the bystanders?—A. Yes, sir."

That is the provision with reference to the selection of an inspector.

"Q. Those surrounding the polls at the opening?—A. Yes, sir.

"Q. Now, was there any official oath administered to you?—A. Yes, sir.

"Q. Administered to you alone, or were the others sworn at the same time?—A. I think they were all sworn at the same time.

"Q. When you say all sworn at the same time, who do you mean?—A. The rest of the board.

"Q. Who were they; who was the supervisor?—A. J. H. Palmer.

"Q. Was he sworn at the same time you were? A. I think so.

"Q. Who were the other members of the board? A. D. W. Knapp, Dennis A. Hager, Mr. Bacon, and the two gatekeepers, Mr. Slayter and Mr. Gilbert, I think; I am not sure.

"Q. J. H. Palmer was the supervisor of the township?—A. Yes, sir.

"Q. You spoke of Mr. Bacon; what office did he hold?—A. Justice of the peace.

"Q. He was justice of the peace of the township at that time?—A. Yes, sir.

"Q. Mr. Hager, what office did he hold?—A. I think he was a justice of the peace, too; he was one of the members of the board, I know.

"Q. When you took the official oath of office, did you stand up with these men you have mentioned?—A. Yes, sir.

"Q. Who administered the oath?—A. Well, now, I couldn't say whether Mr. Palmer or Mr. Bacon; one or the other.

"Q. Did you commence your services there on that board in the morning?—A. Yes, sir.

"Q. What did you do?—A. I handed out the ballots.

"Q. Were the ballots initialed?—A. Yes, sir.

"Q. Do you remember who initialed the ballots?—A. I am not sure, but I think Mr. Bacon did.

"Q. When they were initialed, who were they handed to?—A. They were handed over to me.

"Q. What kind of a situation did you have there in the polls?—A. Well, the voting booths were along here, and I was on one side and the board was on the other.

"Q. Did you have a table?—A. Yes, sir.

"Q. To lay your ballots on?—A. Yes, sir.

"Q. Did you have a chair there?—A. A table and a chair; yes, sir.

"Q. Did you deliver a ballot to each voter as they were called off that day?—A. Yes, sir.

"Q. Did you go in the booths with any voter?—A. I didn't go into the booth, I went to the door to show them, but I didn't tell them how to vote or anything of that kind.

"Q. Did you mark anyone's ballot for them?—A. No, sir; one or two persons called me up to the door and asked me about it and I told them where to mark their ballots.

"Q. Did you stand there to see the ballot was marked?—A. No, sir; I didn't see anyone mark their ballot.

"Q. Witness, did you solicit any person to vote for any particular candidate for any office there that day?—A. No, sir; I did not.

"Q. How long did you remain there at the polls?—A. From early in the morning until 12 o'clock and until 5 o'clock.

"Q. You remained in attendance during the entire day, did you?—A. Yes, sir.

"Q. And you delivered all the ballots that were voted?—A. Every one; yes, sir.

"Q. What are your politics?—A. I am a Democrat."

I think I heard that expression long ago, coming from David Bennett Hill. (Continuing reading:)

"Q. Did you support the Democratic ticket there at that election?—A. Yes, sir.

"Q. Witness, were you in any way interested in the election of John M. C. Smith as a Member of Congress at that election?—A. No, sir.

"Q. I will ask you this question, but you need not answer it unless you want to: Now, did you support John M. C. Smith for the office of Representative in Congress?"

The CHAIRMAN. I do not think you need to read all that. I think we understand the situation. As I understand it, without any authority of law these inspectors swore in Mr. Sayer as an alleged instructor and he stayed by the polls from the opening of the polls until 12 o'clock noon, then they adjourned one hour for dinner, after which time he returned to the polling place and stayed there until they closed in the evening, receiving the ballots from the inspector who initialed them and handing them to the voters, and after they had voted he received the ballots and put them in the box.

Mr. FELLOWS. No, sir—

Mr. ELDER (interposing). He did not put them in the box.

Mr. FELLOWS. Another inspector did that. In other words, he was solely an inspector and not an instructor.

The CHAIRMAN. I would like to hear you on the legal question involved in the case of McCall v. Kirby.

Mr. FELLOWS. All right, sir. I want to call your attention to one further fact in Sayer's testimony. He testified that he voted for Mr. Carney, and the question was asked here by one of the members of the committee —

The CHAIRMAN (interposing). Now, Mr. Fellows, just one moment.

Mr. FELLOWS. Yes, sir.

The CHAIRMAN. As I understand the contention on the other side, they do not claim that any fraud existed?

Mr. FELLOWS. No, sir.

The CHAIRMAN. But they do claim that the vote in this precinct should be cast out because of the fact that there was an opportunity for fraud?

Mr. FELLOWS. Yes, sir. That is based on the fact that an alleged unauthorized person was behind the railing.

The CHAIRMAN. And the Supreme Court of Michigan says that under those circumstances the vote of that precinct should be thrown out.

Mr. FELLOWS. I want to call your attention to our statute, as long as the question of the difference between instructing and assisting has come up, found at page 57 of Exhibit 67, being the election laws of Michigan, paragraph 163:

"When an elector shall not be challenged or shall have taken the necessary oath or affirmation he shall be permitted to vote. (On entering the room the inspector having charge of the ballots shall deliver to him one of them)" —

Now, that is what Mr. Sayer did. He performed absolutely no function other than the function of an inspector —

"and the clerk shall enter his name upon the poll list, together with the number of the ballot given him, and on request such inspector shall give explanation of the manner of voting; if deemed necessary by the board an interpreter may be called."

So that the instruction is given without taking any oath.

With reference to assistance, paragraph 169 of the same book says:

"When an elector shall make oath that he can not read English or that because of physical disability he can not mark his ballot, or when such disability shall be made manifest to said inspectors, his ballot shall be marked for him in the presence of the challenger of each political party having a challenger at such voting place by an inspector designated by the board for that purpose, which marking shall be done in one of the booths."

Now, you see, there is a distinction or a difference between instruction and assistance, and the assistance may be given to him if it is apparent to the board that he needs that assistance, or if it is made apparent by his oath. The doctrine which is urged here is that the vote of this precinct should be thrown out because there was behind this rail an unauthorized person who, while not perpetrating actual fraud, was in such a position that if he was a rascal — I think Judge Grant in his opinion in the Kirby case uses the word "scoundrel" — if he was a scoundrel he could perpetrate a fraud.

Now, the Kirby case arose under these circumstances, and this was the case which was before the court of last resort when they determined the questions involved: Mr. McCall and Mr. Kirby were rival candidates for the office of prosecuting attorney for Gratiot County, and the result of that election depended upon whether the vote of the township of Elba should be counted. I am not going to ask this committee to read them, but I have here the record and the briefs in the case of Attorney General ex rel. McCall v. Kirby and they will bear out my statement. If the committee desires to go into them they may do so. This Kirby case is a case that has been pretty thoroughly discussed in Michigan. Mr. Kirby became a candidate for nomination for congressman at large on the Bull Moose ticket, and his opponent, Mr. Hill, used this case against him, and I think they decided that he was not a fit man to send to Congress, so they nominated him for attorney general, and he came within about 8,000 votes of being elected attorney general of the State of Michigan.

These are the facts in the case: A man by the name of Kerr lived in Elba Township. He was a partisan of Mr. Kirby and had been advocating Mr. Kirby's election in season and out of season. He was sworn in as instructor and performed the duties of instructor. The reported case shows that he approached men when they came in and showed them how to vote for Kirby whether they asked it or not.

Mr. SHIELDS. The supreme court does not say that.

Mr. FELLOWS. Well, I say the reported case shows that; the record shows it, and in the statement of facts they say that the witness stated he showed them how to vote for Kirby.

Mr. SHIELDS. Well, but the supreme court drew a conclusion from that statement of facts—

Mr. FELLOWS. The record shows that he said to some of them: "If you want to vote for Julius you put a cross here, and if you want to vote for Kirby you put a cross here." In other words, he was an unauthorized person within the railing and was acting there as the agent of Kirby. The doctrine laid down in that case was that he being an unauthorized person, if he was a scoundrel, he was in a position to perpetrate fraud.

The CHAIRMAN. That follows the Stillson case. But did not the supreme court in this case expressly find that Kerr did not influence any voters?

Mr. FELLOWS. No; I do not think they found that, but he denied it.

The CHAIRMAN. I call your attention to a part of that decision where they hold that the statute is mandatory.

Mr. FELLOWS. Yes, sir.

The CHAIRMAN. Mandatory as to the conduct of elections, and that the appointment of an instructor was wholly unauthorized.

Mr. FELLOWS. Yes, sir.

The CHAIRMAN. Then they cite the McQuade case in 94 Michigan and the Stillson case in 108 Michigan, and say:

"By a reference to the latter case, on page 421, it will appear that the interpreter, an officer provided by the act, was stationed very near to and in plain sight of the inspectors, and talked with the voters, as they came in, in a foreign language. It does not appear that there was more evidence of fraud in that case than in this. That case differs from this only in two particulars. First, that the conversation between the interpreter and the voters was not in the English language, as it was in this; and, second, that the 'instructor,' as he was called in this case"—

The same as you have in this ward—

"had a better opportunity to secretly influence electors than did the interpreter in that. If these provisions are mandatory, and we have so held,"—

And this is what I want to emphasize—

"they can not be evaded by showing that the parties acted in good faith and that voters were not influenced. The law was intended to prevent just such transactions and chances to influence voters."

Now, how does this Sunfield Precinct differ from that case under the finding of the supreme court?

Mr. FELLOWS. It differs in this: That while the oath was that of an instructor the function which the man Sayer performed was solely that of an inspector. In the Kirby case the man who was there did talk with the voters, had the opportunity, and was an entirely unauthorized person.

Now, in the case at bar, if we regard Sayer as an inspector it will be said that the number of inspectors was more than the lawful number, and therefore there was an unauthorized person behind the railing. The record in the Kirby case shows that this man Kerr actually did get in his work, because it shows that Mr. Kirby's vote was 16 in excess of the next highest man on the ticket and 43 in excess of the lowest man on the ticket. Now, let us apply the doctrine that Judge Grant lays down, that a thing shall not be permitted which in the hands of scoundrels may work fraud.

The CHAIRMAN. He says it should not be permitted at all.

Mr. FELLOWS. He said that it will not be allowed to be done, because if it came into the hands of scoundrels fraud might result.

Mr. SHIELDS. Right there. That statement might be just as well questioned now.

Mr. FELLOWS. The testimony is that Sayer, Palmer, and Bacon were all Democrats and Mr. Mapes was a Bull Moose. There were three Democrats and one Bull Moose on the board of inspectors.

Mr. CARNEY. How about Witherall and Knapp?

Mr. FELLOWS. Witherall came in afterwards and he was not sworn at all, and you challenged the validity of that precinct because he was not sworn. He swore that he was a member of the Democratic county committee. Now, I say that that being so, they knowing that this precinct was going to give a Republican majority, because Palmer testified to that—that it was a Republican town, although he was elected in the spring—knowing that, I say, this board intentionally violated the law. But suppose they did?

We do not charge it, because they are all men of undoubted probity. But suppose they intentionally violated the Michigan statute and the vote is thrown out. Then apply the doctrine laid down by the court in the Kirby case, that the court will not permit that to be done which, even if it be done innocently, is susceptible of being used with a fraudulent design. Let us say, here is a board solidly Democratic, or a majority is Democratic. They do those things which under the law would vitiate the poll. In the language of Judge Grant, they do not consider the question of whether it

is done innocently or with felonious intent. If it is possible for a felonious intent to exist, the court will not permit it to be done.

The CHAIRMAN. In other words, you think that Judge Grant delivered a bad decision?

Mr. FELLOWS. No, sir. I apply his decision in this way: That if you throw out this precinct you will put it in the hands of a partisan board, if they so desire, to vitiate a poll intentionally. This is a Republican precinct. Applying the doctrine laid down by Judge Grant, that a thing will not be permitted which may be done innocently but can be used for a fraudulent purpose, I say here that so far as Sunfield township is concerned it may be used for a fraudulent purpose, because an adverse board could vitiate the poll and violate the mandatory provisions of the Michigan statute. In other words, they could permit somebody to come in there who was an unauthorized person and remain there all day, and by reason of that the poll would be vitiated.

In the Kirby case Mr. Kirby was a large number of votes ahead of his ticket. In the case at bar Mr. Carney was substantially with his ticket, the difference between about 101 to 105. In other words, Mr. Carney had his party vote in that precinct. Mr. Sayer did absolutely nothing to influence anybody.

Mr. FREAR. What was Mr. Smith's majority?

Mr. FELLOWS. Seventy.

Mr. SMITH. Just the normal vote.

Mr. FELLOWS. A majority of 70. He was maybe 1 vote ahead of his ticket and Mr. Carney was substantially with his ticket.

Now, let us go a little further. If the presence of an unauthorized person behind the polls vitiates the poll, then this committee must throw out two precincts of the city of Albion and various precincts of the city of Kalamazoo. I call your attention to page 477 of the record with reference to the second ward of the city of Albion.

Mr. ELDER. In the Kirby case was the inspector sworn?

Mr. CARNEY. Yes.

Mr. FELLOWS. The inspector was sworn.

Mr. CARNEY. He took the oath as an instructor.

The CHAIRMAN. Is this ward in Albion brought into question in the notice or answer?

Mr. FELLOWS. Yes, sir; I understand so.

Mr. CARNEY. Not on this question.

Mr. FELLOWS. On page 477 you will see the certificate that is signed by the inspectors, showing that in that ward Mr. Smith received 79 and Mr. Carney 126 votes. There were also unauthorized men upon that board to a certain extent, as an examination of the record at the next page will show, about the middle of the page:

"Q. I show you Exhibit 68; what is that?—A. The poll book of the general election held on Tuesday, the 5th day of November, A. D. 1912, in the second ward of the city of Albion, county of Calhoun, State of Michigan.

"Q. Turn to where the officers were sworn and tell how many inspectors were sworn in there that day; how many signed the oath of office as inspectors?—A. Six.

"Q. Six inspectors?—A. Yes, sir; do you wish the balance of them?

"Q. Yes.—A. Charles S. Loud was put on as an extra man for the amount of work to be done that day. After the voting was all done and the polls closed, because he had other business or something of that sort, we excused him.

"Q. He never signed any of the returns?—A. No, sir.

"Q. How many clerks did you swear there? Did this man Loud act as inspector during the whole day until you quit and the polls closed at 5 o'clock?—A. Yes, sir.

"Q. Then you had six inspectors during the election?—A. I don't know whether you would call them all inspectors or not.

"Q. It shows they were sworn as inspectors, does it not? Look at the oaths of office and read the names of the inspectors as they appear in the book.—A. (Reading:) 'Charles H. Baker, H. C. Nelson, Otto Conrad, Charles S. Loud.' How am I going to know who wrote that 'inspector' over that word 'clerk?' Somebody erased 'clerk' and wrote in 'inspector.'

"Q. Read it as the book appears.—A. I will explain here by saying some one has drawn a line through the word 'clerk' and written in 'inspector.'

"Q. That is on the page of the oath of clerks?—A. Yes, sir; some one has drawn a pen through that and written in 'inspector.' William Bemer's name is under that.

"Q. What is the next one?—A. I don't know whether I signed that before 'inspector' was written in there or not.

"Q. You would be an inspector, being the supervisor?—A. Yes, sir. The next is Frank Laberteaux. The word 'clerk' has a line drawn through and the word 'inspector' written over it.

"Q. Was Laberteaux an inspector?—A. He was appointed election inspector by the council.

"Q. He signed this as inspector, as it now appears?—A. Yes, sir; I don't know whose writing that is nor when it was done.

"Q. Is that all?—A. As it appears on the book, they are all sworn in as inspectors.

"Q. Yourself and Laberteaux were actually inspectors?—A. Yes, sir.

"Q. Then more than one man swore you all in as a notary public?—A. Yes, sir.

"Q. Read that oath, what you signed.—A. (Reading:)"

Then the oath is read. Now, if the doctrine of the Kirby case applies there, the second ward of the city of Albion should be excluded.

Mr. FREAR. What was the vote there?

Mr. FELLOWS. Smith 79, Carney 126.

Mr. FREAR. Forty-seven majority for Mr. Carney?

Mr. FELLOWS. Yes; that would be 47 majority. Referring to Mr. Reed's testimony on page 486, you will see that in the fourth ward Smith received 74 and Carney 149 votes, a majority of 75. That is the fourth ward, and in order to show the complexion of that ward I read from page 487:

"Redirect examination by Mr. FRANKHAUSER:

"Q. I will ask you what your politics are?—A. I am a Democrat.

"Q. Mr. Culver, was he a Democrat?—A. Yes, sir.

"Q. Mr. Bemmer a Democrat?—A. No, sir.

"Q. What is he?—A. Progressive Republican.

"Q. The city clerk is what?—A. A Democrat.

"Q. Out of the four witnesses we have had from Albion none are at present Republicans as you understand it?—A. Mr. Bemmer, I believe, at that time was acting in the capacity of a Republican.

"Q. You say he is a Progressive now?—A. Yes, sir.

"Q. We have had no witnesses here from Albion to-day who is a Republican at the present time?—A. No, sir.

"Q. Three of them are Democrats?—A. Yes, sir."

Now, that shows the make-up of that board. Then, turning to Climax—

Mr. FREAR (interposing). Just a moment. What evidence is there as to any unauthorized persons being behind the railing? Is this ward in connection with the other?

Mr. FELLOWS. Yes, sir.

Mr. FREAR. Where there were unauthorized persons behind the railing?

Mr. FELLOWS. Yes, sir. Well, I may be mistaken about that.

Mr. FREAR. That is what I wanted to know. The law required or permitted the appointment of these inspectors, but afterwards it was changed?

Mr. SHIELDS. No, sir; they were acting as tally clerks.

Mr. FREAR. I was just trying to get clear in my mind what the situation was out there.

Mr. SHIELDS. If counsel will show what these men did there, I think you will see that his contention is wrong.

Mr. FELLOWS. Mr. Frear asked as to these inspectors, as to their number.

Mr. FREAR. No; I asked why you refer to this precinct as compared with the other.

Mr. FELLOWS. My recollection is that in that precinct they also had six instructors. Now, that is just my recollection as to that ward.

Mr. CARNEY. The record does not show it.

Mr. FELLOWS. I may be mistaken about that. I will not make any claim for it until I am able to show something a little further.

Now, Mr. Smith has handed me a statement, and I will read a portion of it:

"If an unauthorized person acting upon a board, annuls the entire vote, what effect will it have on the vote in Cambria Township, where contestant received a plurality of 65 votes and where W. D. Payne tallied for two hours without being sworn as an inspector or clerk? (Record, p. 575.) Or in the second precinct of the city of Albion, where contestant received a plurality of 47 votes and where there were 5 inspectors who acted (Record, p. 477), while the charter provides for only 4. (Record, p. 467.)"

Mr. BORCHERS. Right there. You said that this man "tallied" for two hours. What do you mean by "tallied?"

Mr. FELLOWS. It is urged here in regard to the township of Carmel, I think, that certain men were unauthorized to tally the vote.

Mr. CARNEY. In the middle of the afternoon.

Mr. FELLOWS. Yes, sir. It was insisted that they were not permitted to do that tallying in the afternoon, and it is also urged that the men were unauthorized to act as clerks because the board was full at that time and they had no right to increase the membership. Now, in the township of Cambria a man was permitted to go on tallying—

Mr. BORCHERS (interposing). That is what I am asking about. I want to know just what he did for two hours; do you mean that he opened and tallied the vote?

Mr. FELLOWS. No, sir; he sits there and tallies the vote——

Mr. CARNEY (interposing). Be fair to him; that is what he wants to get at.

Mr. FELLOWS. I am fair. I have been fair all through this case. From beginning to end I have sought no unfair advantage of anyone.

The CHAIRMAN. As I understand Mr. Fellows's statement of the facts and the testimony in this record, this party was permitted to come in while they were counting the votes and help tally. Suppose you were to read off the vote to me: "John Doe, for sheriff, 1," and so on, I would keep the tally.

Mr. BORCHERS. There was no chance to influence votes at that time, was there?

Mr. FELLOWS. No, sir. I say that after the votes get into the ballot box then the provisions of the law are directory, but I will take that up later.

The CHAIRMAN. What were you reading from?

Mr. FELLOWS. I am reading from a statement handed to me by Mr. Smith a few minutes ago, giving the page references to the record.

"And what about Moscow that gave contestant a plurality of 57 votes, where one of the inspectors incapacitated himself by strong drink? (Record, p. 550.) And the township of Reading, where they voted in a shoe box (record, p. 576), and where two inspectors and two challengers went out on the street and collected 3 ballots, in which precinct contestant received a plurality of 61 votes. The testimony shows that Mrs. Oldfield folded and handed out ballots to the voters in the seventh precinct of Kalamazoo city. (Record, p. 489.) This testimony is not denied."

Although Mrs. Marsh denies that she handed out any ballots. That last statement I made is not in the statement handed to me by Mr. Smith.

"And in the several precincts of the city of Kalamazoo ladies were permitted within the voting place without credentials of any kind."

Now, turning to the seventh precinct of the city of Kalamazoo, I read from Mr. Chase's testimony at page 488. In this precinct Mr. Smith received 157 votes and Mr. Carney received 196. The following is on direct examination by Mr. Maynard:

"Q. When did the polls close that day?—A. At 5 o'clock.

"Q. Did you begin counting the ballots immediately?—A. Yes, sir.

"Q. How long were you engaged in that work?—A. Well, from 5 o'clock until somewhere in the neighborhood of 2 o'clock the next a. m.; I wouldn't say exactly. We stopped for supper.

"Q. Where did you have your supper?—A. Right there in the same room where the clerks were located.

"Q. How many were engaged as inspectors of the election?—A. I am not positive, but I think eight. There were two door tenders or gatekeepers, but I couldn't say exactly; I think eight.

"Q. In all?—A. Yes, sir.

"Q. What part did you take?—A. I received the ballots.

"Q. Did anyone initial the ballots?—A. Yes, sir.

"Q. All of them?—A. Yes, sir.

"Q. What was the railing surrounding that booth?—A. The railing that surrounded the booths?

"Q. Yes; what was it?—A. There was no railing at all. The booths had doors. We were in a separate room from where the booths were.

"Q. You were in the room where they were initialing?—A. No, sir; a separate room.

"Q. Could you see the booths from where you were?—A. Not without getting up from my chair. Some of us could. The man that gave the ballots out could, but the rest of them could not without getting up off their chairs.

"Q. How did they see them, through the door?—A. Through the window—practically a door—a half window.

"Q. When you gave the ballots to the voter where did he go?—A. I didn't give the ballots to the voter. The man who did he went in the booth and came out and delivered it to me.

"Q. By whom was the ballots delivered to the voters?—A. I think W. E. Geary.

"Q. Did anyone else receive ballots there that day?—A. Only during meal hours.

"Q. Who did?—A. I couldn't say. We all took turns at the box.

"Q. The whole eight of you?—A. Yes, sir.

"Q. Was there anybody in that booth that day aside from the inspectors?—A. Well, yes; the city clerk was in there, and the city attorney was in there two or three different times.

"Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, there being no allegation of that kind in the contestee's answer that would warrant the introduction of any such testimony under the issue.

"A. (Continuing.) There were several there. I couldn't say just who they were now, but different ones came into the back door. There is a front and a rear door to this precinct. I couldn't say now, but several different ones looking after their candidates there, who had voted and who had not.

"Q. There was nothing to hinder their coming right in?—A. No, sir; the doors were not locked.

"Q. Do you know of anybody aside from the inspectors who handled ballots?—A. No, sir; I do not; not at that election.

"Q. During the day?—A. Not at that election.

"Q. Do you know a woman named Miss Marsh?—A. Yes, sir.

"Q. Was not she present and didn't she hand out ballots?—A. I may be mistaken, but it seems to me she was there in the spring but not in the fall—she was there in the fall, I think.

"Q. At the November election?—A. Yes, sir; that is when she was there, and also Mrs. Oldfield.

"Q. They were handing out ballots to the voters in that precinct, were they not?

"Mr. ADAMS. I object to that as leading.

"A. I think—I am not positive—I think that Miss Marsh and Mrs. Oldfield did fold ballots two or three different times and did hand them out for Mr. Geary.

"Q. Was he an inspector?—A. He was the man that gave out the ballots; yes, sir.

"Q. You say that you finished counting along about 2 o'clock in the morning?—A. About that time; yes, sir.

"Q. As near as you can tell?—A. As near as I can tell; yes, sir.

"Q. When did you commence making out the returns, after you commenced counting the ballots?—A. Yes, sir; we couldn't make them out before.

"Q. Did you adjourn before they were made out?

"Mr. ADAMS. We object to that as incompetent, irrelevant, and immaterial, there being no such allegation in the answer.

"A. We made them out right then and there; as soon as we finished counting we made out our report.

"Q. The whole eight of you signed this?—A. I think so; yes, sir."

The CHAIRMAN. How many inspectors are there under the law?

Mr. FELLOWS. Four.

The CHAIRMAN. How many are sworn?

Mr. FELLOWS. Eight were sworn, and eight were acting. He says that they all took tickets, that they all acted as inspectors.

Mr. CARNEY. Oh, no; he says there were eight in all sworn in, including those who were acting as extras.

Mr. FELLOWS. Let me read from page 488 of the record. [Reading:]

"Q. Did anyone else receive ballots there that day?—A. Only during meal hours.

"Q. Who did?—A. I couldn't say. We all took turns at the box.

"Q. The whole eight of you?—A. Yes, sir.

"Q. Was there anybody in that booth that day, aside from the inspectors?—A. Well, yes; the city clerk was in there, and the city attorney was in there two or three different times.

"Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, there being no allegation of that kind in the contest he has answered that would warrant the introduction of such testimony under the issue.

"A. (Continuing.) There were several there. I couldn't say just who they were now, but several ones came into the back door. There is a front and rear door to this precinct. I couldn't say now, but several different ones, looking after their candidates, men who had voted and who had not.

"Q. There was nothing to hinder their coming right in?—A. No, sir; the doors were not locked.

"Q. Do you know of anybody, aside from the inspectors who handled ballots?—A. No, sir; I do not; not at that election.

"Q. During that day?—A. Not at that election.

"Q. Do you know a woman named Miss Marsh?—A. Yes, sir.

"Q. Was not she present, and did she hand out ballots?—A. I may be mistaken, but it seems to me she was there in the spring but not in the fall. She was there in the fall, I think.

"Q. At the November election?—A. Yes, sir; that is when she was there, and also Mrs. Oldfield.

"Q. They were handing out ballots to the voters in that precinct, were they not?

"Mr. ADAMS. I object to that as leading.

"A. (Continuing.) I think—I am not positive—I think that Miss Marsh and Mrs. Oldfield did hold ballots two or three different times, and did pass them out for Mr. Geary.

"Q. Was he an inspector?—A. He was the man that gave out the ballots; yes, sir.

"Q. You say that you finished along about 2 o'clock in the morning?—A. About that time; yes, sir.

"Q. As near as you can tell?—A. As near as I can tell; yes, sir.

"Q. When did you commence making out the returns, after you commenced counting the ballots?—A. Yes, sir; we couldn't make them out before.

"Q. Did you adjourn before they were made out?

"Mr. ADAMS. We object to that as incompetent, irrelevant, and immaterial, there being no such allegation in the answer. He made them out right then and there; as soon as we finished counting, we made out our report.

"Q. The whole eight of you signed this?—A. I think so; yes, sir."

I am not here to misquote this record or to try to mislead this committee, and I do not take with favor such suggestions.

Mr. FREAR. The chairman asked you in regard to this decision which has just been read, if that is in force and the 70 votes are to be thrown out in this precinct because of the fact that there were some extra instructors in it—he asked you what you had to say about that, and you return by saying that here are other precincts in which the same condition exists, and you refer to the second ward of Albion, in which some 49 votes were cast in favor of Mr. Carney, and to the 39 votes in Kalamazoo. This is your answer to the statement of the chairman?

Mr. FELLOWS. Yes, sir; and not only that, but without going into details, attention is directed in our brief to the fact that in practically every ward in the city of Kalamazoo women were attending the polls. There is no testimony that these women had any credentials from any committee or from anything of the kind. It is alleged that the act passed at the special session of 1912 permits them to act as challengers, but I do not so construe that act. In other words, I do not construe the act as being an act to take out of the hands of the voting population the machinery for running the elections.

Mr. CRISP. In the answer of the contestant, are these precincts to which you are now referring brought in?

Mr. FELLOWS. I am not prepared to say that they are so specifically as they ought to be. I apprehend that if the contestant's notice is amended or if you will permit him to amend his notice, that of course that would give the contestee the right to amend his notice also.

Mr. CRISP. I think undoubtedly you are right about that.

Mr. FELLOWS. I will call your attention right now to the place where that law is found. It is on page 212 of the printed record, Judge Post. I will not stop, however, to read it now.

Now, I want to call your attention to the testimony of another witness in this same ward, Mr. B. O. Bush. This is that same ward of Kalamazoo, the seventh precinct of Kalamazoo. This is page 513 of the record. Miss Marsh admits that she was present, but denies that she passed out any ballots.

Mr. FREAR. Leaving out of the question Miss Marsh, what about these eight inspectors?

Mr. FELLOWS. It is claimed that four were unauthorized. If the poll should be vitiated in Sunfield by reason of the presence of an unauthorized person within the polling place, then the poll in Albion and Kalamazoo should be vitiated for the same reason.

Mr. FREAR. These ladies claimed to be there in addition to the inspectors?

Mr. FELLOWS. Yes. In fact, Miss Marsh's testimony said in substance that she was not appointed, except that she was self-appointed and went there because she thought her presence there would help the woman's suffrage cause. She testified that she did not solicit any votes.

The CHAIRMAN. Did they vote on the suffrage question that day?

Mr. FELLOWS. Yes.

The CHAIRMAN. Do you not think that under this special act they had a right to be there?

Mr. FELLOWS. No; I do not concede that they had a right to be there. I do not concede that the special act permits others than electors to be behind the railing. In other words, as I view that, the challengers should be voters, and that the act does not authorize women to step behind the polls.

Mr. ELDER. Did the other lady there, did she admit —

Mr. FELLOWS (interposing). She was not sworn at all, so it is uncontradicted that she did hand ballots out and did fold them.

Mr. ELDER. I understood that she folded them and handed them to one of these inspectors.

Mr. STEVENS. She handed them to the voter.

Mr. FELLOWS. I will read from the testimony of Mr. Bush, page 513 of the record:

"Q. Mr. Bush, where do you reside?—A. 36 West South Street, in the city of Kalamazoo.

"Q. Were you a member of the board of election inspectors of the election held in the seventh precinct of the city of Kalamazoo, county of Kalamazoo, State of Michigan, on the 5th day of November, A. D. 1912?—A. I was; yes, sir.

"Q. Did you see women behind the railing there?—A. Yes, sir.

"Q. Do you know a woman by the name of Miss Marsh?—A. I know a woman who was introduced to me as Miss Marsh.

"Q. Was she present there behind the railing during the election in that precinct?—A. Yes, sir.

"Q. Did you see her handling any ballots at that election in that precinct—handing them to the voters?—A. Well, we were very busy that day, and one of the inspectors signed the ballots and, there being seven ballots in all, it was a pretty hard matter to fold the ballots and get them ready and keep enough ahead to supply those. The lady, she did not interfere, but now and then she would assist a little in folding, and oftentimes when a man's name was called handed them out in the general order so the numbers agreed on the ballots, once in a while. She was very ladylike about it; she would pick up the ballots according to the number and hand them to the man when we called his name off the book of registration.

"Q. She handed the ballots instead of the inspectors?—A. Yes; she did that several times.

"Q. Was she in any way connected with the board of election and inspectors there?—A. She was not; no, sir.

"Cross-examination by Mr. Adams:

"Q. This Miss Marsh only had the suffrage ballots, didn't she?—A. She handled the whole bunch. There were seven ballots, if I remember right; seven of them, I think, last fall. I may be thinking back—I said seven—I was thinking back of the spring election. There was more than—I will not say the number of ballots. The suffrage ballot and the general ballot, upon which ballot the State and county tickets are, I will not say; but in order to keep the numbers to correspond, we would slip them into wrappers as the ballots were signed up, so as not to lose track of the number of the ballot, so they would always correspond with the number on the poll list. The ballots lay there and I would look up, and when I would say 'All right' she would take the ballots herself and hand them out through the window to the applicant or voter.

"Q. She was right there near you?—A. Yes, sir.

"Q. You were right there close to Miss Marsh when she handed them out?—A. As close as to Mr. Shotwell here.

"Q. Within a couple of feet?—A. Yes, sir."

Mr. ELDER. Does the law permit these lady challengers to be there; did it authorize them to act in any other way except as challengers?

Mr. FELLOWS. I am not prepared, Judge, to construe the act as permitting them to act as inspectors.

Mr. ELDER. Assuming it permitted her to be there as a challenger, did it permit her to hand out ballots?

Mr. FELLOWS. Oh, no; the only thing that the challenger has to do with reference to the ballot is that if the voter is assisted the assistance is conducted in the presence of the challenger.

Mr. BORCHERS. Was she "Miss" or "Mrs."?

Mr. FELLOWS. I think she is a "Miss."

Mr. BORCHERS. An old maid?

Mr. CARNEY. Yes; she is an old-maid school-teacher in the normal school.

Mr. FELLOWS. I am not aware what her occupation is. As I say, she denies it; but Mrs. Oldfield does not deny that she did this same thing, and so far as Mrs. Oldfield is concerned the testimony is uncontradicted.

The CHAIRMAN. How long will it take you to finish, Mr. Fellows?

Mr. FELLOWS. I doubt very much if I can finish at the forenoon session.

The CHAIRMAN. We may decide, then, to adjourn until 10 o'clock to-morrow; but I wish to say something to the members of the committee first. An amendment has been put in here, of course without authority, and I have thought probably that the contestant would want to put in an additional amendment also.

Mr. CARNEY. The contestee, you mean?

The CHAIRMAN. Yes, to meet the other.

Mr. FELLOWS. Could I be heard upon the question of amendment before you finally determine on that?

The CHAIRMAN. What have you to say in regard to that, Mr. Carney?

Mr. CARNEY. Do I understand that the contestee has filed an amendment?

The CHAIRMAN. No, not yet.

Mr. ELDER. I move that they simply be allowed to broaden their pleas, to cover any evidence additional—not open the case for other evidence, but broaden it to cover any evidence in the record for both parties.

Mr. STEVENS. I second the motion.

Mr. CARNEY. May I just make a suggestion? I do not know but what that will be satisfactory, but some of these things that are being sprung at us now have not been alleged in the brief and were not alleged at any place by an amendment, and if the amendment was not formally offered and notice given in the regular way, we would not have an opportunity of taking testimony. Now, there may be possibly some little things here that the committee might have some question about. There is one question that occurs to me now, the question of Miss Marsh and Mrs. Oldfield. So far as Mrs. Oldfield is concerned, I do not believe anybody apprehended that it would be alleged that there was any substantial proof at all that she handed out a single ballot.

If you will remember, Mr. Chase testified that he thought she folded some ballots and handed them out. Mr. Bush, you will notice, testified that Miss Marsh handed out these ballots. I am not sure whether Mr. Geary's attention was directed to it, but I know he claimed that nobody handed out any ballots but himself. Now, in fairness, when they ask for an amendment at this time, we should know what they will claim.

Mr. STEVENS. Did Mrs. Oldfield testify in this matter?

Mr. CARNEY. No, sir.

Mr. FELLOWS. The testimony that she did fold these ballots and hand them out is uncontradicted, because witnesses were not called and did not deny it.

Mr. CARNEY. There is another thing on that. The testimony of Mr. Chase is pretty badly mixed, and Mr. Bush, who Mr. Fellows has just quoted, says that he was in a very greatly intoxicated condition that day.

The CHAIRMAN. Gentlemen, a motion has been made, and that motion is to permit each party to amend his plea, but that the amendment shall be limited to the record as it exists. On that question the clerk will call the roll.

(On roll call, the committee voted "aye" unanimously.)

The CHAIRMAN. The motion is carried.

The CHAIRMAN. How long will it take you to do this?

Mr. BORCHERS. If we have a committee meeting to-morrow, it will be impossible for me to be present.

The CHAIRMAN. How would it do to go on at half past 1 this afternoon?

Mr. CARNEY. It will be satisfactory as far as I am concerned.

Mr. SHIELDS. It suggests itself to me that if Mr. Fellows thinks he can finish in three-quarters of an hour, in that case we might get through this afternoon.

Mr. FELLOWS. Of course, considerable of my time has been taken up in questions this morning.

Mr. SHIELDS. I was going to suggest that, so far as answering what has already been presented, an hour would, I think, be sufficient time for me. If we should raise additional questions, of course it might take longer.

Mr. FREAR. I suggest that Mr. Smith file his amendment, so that you may know what is contained in it. You are entitled to that. Could you have your amendment ready by half past 1?

Mr. FELLOWS. I do not know whether we could have it by that time, but we could have an understanding that it only covers the facts set up in the testimony.

The CHAIRMAN. When will you prepare it?

Mr. FELLOWS. Right away.

The CHAIRMAN. Very well; we will adjourn until 2 o'clock this afternoon.

AFTER RECESS.

The committee reassembled at 2 o'clock p. m., pursuant to recess taken.

The Chairman. You may proceed, Mr. Fellows.

Mr. SMITH. I have submitted to counsel on the other side an amended answer, and unless they have some objection I will read it and submit it.

The CHAIRMAN. Very well, suppose you read it.

(The amendment referred to is as follows:)

(By permission granted by the committee.)

CLAUDE S. CARNEY, <i>Contestant</i> ,	} Amendment to answer of contestee and respondent.
JOHN M. C. SMITH, <i>Contestee and Respondent</i> .	

To the House of Representatives in the Congress of the United States:

Comes now the contestee, John M. C. Smith, and amends his answer heretofore filed in this case, and gives additional notice that under the rule invoked by the contestant that the election in the following precincts, to wit:

In the first, second, and fourth wards of the city of Albion, in Calhoun County, and in the first, second, third, fourth, fifth, sixth, seventh, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth precincts of the city of Kalamazoo; and also in the townships of Comstock, Texas, Brady, Ross, Cooper, Alamo, and Prairie Ronde, in the county of Kalamazoo, in each of which the contestant received a majority of the votes, should be set aside and held to be void for the following reasons, to wit:

1. That the returns are not properly executed, signed, and sworn to by the election officers.
2. That the illiterate and disabled voters were not sworn before casting their ballot.
3. That the returns were not properly sealed as required by law.
4. That outside and unauthorized persons acted as election officers.
5. That the vote was not counted by properly authorized inspectors and clerks of election.
6. That the returns were not made out and executed upon the completion of counting the votes.
7. That there was no proper tally or register kept of the vote by authorized clerks or inspectors of election.
8. That unauthorized and outside persons acted as clerks and inspectors of election.
9. That the board of election inspectors adjourned at various and divers times on election day and before completing the canvass of the votes without warrant of law.
10. That unauthorized persons assisted in the conduct of the election and the canvass of the votes.
11. That no legal returns of the election were made.
12. That unauthorized persons were admitted and remained behind the railing and within the voting places during the time of voting.
13. That there were no railings around the booths in the voting places.
14. That the election inspectors distributed and received the ballots in a room different from that containing the booths.
15. That the returns made to the board of county canvassers were not opened by the board of county canvassers, and still remain intact and under seal.
16. And also for the various reasons set forth in the answer heretofore filed.

JOHN M. C. SMITH, *Contestee*.

Mr. SMITH. Now, that may not be entirely complete, but that is substantially what it is. Following that, the committee may possibly ask in what precinct that would apply, and I have prepared—partially prepared, but I would not like to be confined entirely to this—the case was brought before I had it prepared as I would like to have had it prepared before submitting it for the record, but I have here a statement of the places that would apply to and that I think would follow in that connection.

Contestant then cites several cases that the law requiring the inspectors to first swear the illiterate voters before rendering them assistance is mandatory and the failure to comply with such law renders the whole vote void. (Contestant's brief, p. 43.) If such is the holding of the committee, then we ask that the same ruling be applied to the third, fourth, ninth, tenth, twelfth, thirteenth, and fourteenth precincts in the city of Kalamazoo, which gave contestant a plurality of 395 votes.

Mr. CARNEY. Will you read those precincts again, please? I think they ought to be in the amendment.

The CHAIRMAN. I thought it was tacitly agreed by the gentlemen on each side the other day that under the law in Michigan where there are illiterate voters voted and they are not properly handled in casting their votes, that under the law of Michigan only those votes would be cast out, and it would not affect the whole poll. My understanding is that both sides agreed to that the other day.

Mr. CARNEY. These decisions were both quoted in our brief.

Mr. SMITH. This is simply to make up the record. This is the answer I have prepared if they made that claim. They opened the case on that ground, and this is done solely for the information of the committee.

The precincts were the third, fourth, ninth, tenth, twelfth, thirteenth, and fourteenth precincts in the city of Kalamazoo, which gave the contestant a plurality of 395 votes. In all of which it appears that the illiterate voters were instructed and assisted in the preparation of their ballots, without any oath being administered, and further that if this ward is to be rejected for innocently suggesting the name of contestee to a confused voter who wished to vote for him, or for instructing him how to mark his ballot, then we ask that the seventh precinct of Kalamazoo, which gave contestant 39 plurality, where the city clerk and city attorney were two or three times within the booths, be also rejected, and that the second precinct of the city of Kalamazoo, which gave contestant 69 plurality, and where one of the gate keepers being within the booths, instructed the voters and told them how to vote, be also thrown out (Record, p. 499).

Now, you may want to know where some of these conditions exist, and I will say for the information of the committee that it is in the township of Cambria, Hillsdale County, where contestant received a plurality of 65 votes, and where W. D. Payne tallied for two hours without being sworn as inspector or clerk. (Record, p. 575.) Also the second precinct of Albion, where contestant received a plurality of 47 votes and there were five inspectors who acted (Record, p. 477), while the charter provides for only four (Record, p. 467). And what about Moscow, that gave contestant a plurality of 57 votes where one of the inspectors incapacitated himself by strong drink (Record, p. 550), or Reading Township, where they voted in a shoe box (Record, p. 576), and where two inspectors and two challengers went out on the street and collected ballots, in which precinct contestant received a plurality of 61 votes.

The CHAIRMAN. In that connection, have you any law governing the conduct of election inspectors where a voter is unable to get out of a rig and go into the polls?

Mr. SMITH. No, sir.

The testimony shows that Mrs. Oldfield folded and handed out ballots to the voters in the seventh precinct of Kalamazoo city (record, p. 489). This testimony is not denied.

Now, I know it will be of great aid to the committee, and I only make these amendments and references to aid the committee, because the record is so full already that it is too much to ask the committee to read this from cover to cover, but if you decide to apply these rules to these wards, we will ask you to consider these precincts which I have prepared here. I have shown to Mr. Carney this list of precincts and townships, and under those precincts are the witnesses for the contestant and the contestee, which you will find very convenient. Then you can turn to the index and see just where the page is in the index, but the index does not give the township, but only the name. Now, when the township or precinct occurs to you gentlemen, you can turn to this record index, and under that will be shown the witnesses for the contestant and for the contestee. That is for your convenience. If you will print it in the record, I am quite sure you will find it very convenient. If I had had time, I would have put the figures in in the answer.

The CHAIRMAN. Can you have somebody in your office go through it and put in the pages?

Mr. SMITH. Very readily.

The CHAIRMAN. Then we can make it a part of the record.

Mr. SMITH. I will have the pages put in just as they appear in the index, so that you will not have to refer to the record to find the pages.

Mr. STEVENS. That contains the names of all witnesses?

Mr. SMITH. Yes, sir.

Mr. SHIELDS. So that the names can be secured from here?

Mr. SMITH. I just received the letter from the committee notifying me of the hearing the day before they met. I did not have counsel and was not looking for it quite so soon. I almost feel as though I came too soon, but this was among my files and I am willing to let it go into the record as a matter of convenience.

(The list referred to is as follows:)

[Figures refer to record pages.]

BRANCH COUNTY.

UNION CITY.

Witnesses for contestant.

Witnesses for contestee.

W. H. Tower, supervisor, 155-170.

CALHOUN COUNTY.

BATTLE CREEK.

Second precinct, second ward.

Agnes M. Sterling, deputy county clerk, 134-135. Geo. W. Schneider, chairman county canvassing board, 135-153.	Thos. H. Thorne, recorder, 439-440. Ray E. Hart, county clerk, 442-451. Fred L. Christian, chairman, 457-460; 465-467. Harry Christian, inspector, 460-465.
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MARSHALL.

Second ward.

| Starr K. Church, inspector, 440-442, 453.

ALBION.

| W. A. Noyes, city clerk, 467.

First ward.

| S. W. Culver, supervisor, 467-476.

Second ward.

| Wm. Bemmer, supervisor, 476-484.

Fourth ward.

| M. O. Reed, supervisor, 484-487.

EATON COUNTY.

CHARLOTTE.

Sam Robinson, 37-43. Myron Hawkins, county canvassing board, 56-66. R. L. Sowers, 80-85. Ernest Davids, 93-98. Frank Ford, county clerk, 114-126, 390- 392.	J. C. Nichols, county clerk, 304-333, 334- 358. J. H. Brown, chairman canvassing board, 358-365. Frank Ford, county clerk, 114-126, 390- 392. E. G. Pray, executive committee clerk, 412-420.
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Second ward.

F. M. Overmyer, challenger, 48-56.	H. A. Hamilton, alderman, 365-371 C. R. Barber, alderman, 371-385. C. S. Knowles, alderman, 385-389. Roy D. Preston, clerk, 392-400. Herman Gulde, clerk, 401-405.
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Third ward.

Jackson Mosier, challenger, 43-48.	E. Dunning, alderman, 405-412. J. B. Dowdigan, alderman, 420-424. C. E. Fisher, clerk, 424-427. Roy Munger, clerk, 427-431. J. W. Sawyer, challenger, 431-433.
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Fourth ward.

F. B. Johnson, challenger, 85-90.

SUNFIELD TOWNSHIP.

John Palmer, supervisor, 66-78. Wm. Witherall, 90-93. Sylvester Franks, 78-80.	Joel Bera, deputy clerk, 243-247. D. A. Hager, justice of the peace, 216-235, 247-249. D. W. Knapp, clerk, 237-243, 249-250, 333-334. H. H. Mapes, township clerk, 250-258. A. H. Sayer, inspector, 433-438. Z. D. Slater, gate keeper, 235-237.
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BELLEVUE TOWNSHIP.

E. A. Johnson, gate keeper, 90-104, 105.

A. B. Hoyt, 258-261.

Orrin Kimberly, 261-262.

H. M. Weed, supervisor, 262-266.

Daniel Hall, justice of the peace, 266-268.

CARMEL TOWNSHIP.

W. A. Case, challenger, 104-114.

C. Cushing, challenger, 269-281.

G. Griffin, supervisor, 281-290.

W. L. Huber, justice of the peace, 290-299.

W. C. Martin, clerk, 296-298.

H. Shaver, justice of the peace, 299-304.

Wm. Clements, 400-401.

DIMONDALE TOWNSHIP.

W. J. Bateman, supervisor, 170-174,
181-182.Ray Burnett, township clerk, 174-176,
183.S. G. Vanderbeck, justice of the peace,
176-179, 182-183.

F. L. Smith, justice of the peace, 179-181.

HILLSDALE COUNTY.

HILLSDALE.

Carybelle Hancock, deputy county clerk,
555-571, 598-599.

CAMDEN TOWNSHIP.

Frank Fast, justice of the peace, 546-548,
549, 571-572.

H. C. Crane, 548.

MOSCOW TOWNSHIP.

M. H. Bleech, clerk, 549-551, 571.

L. Siegel, clerk, 551-554.

WRIGHT TOWNSHIP.

O. J. Gleason, supervisor, 554-555,
583-584.

Jesse Barber, justice of the peace, 582-583.

CAMBRIA TOWNSHIP.

Kay Smith, clerk, 572-575.

W. D. Payne, clerk, 575-576.

READING TOWNSHIP.

J. Campbell, inspector, 576-582.

E. R. Galloway, supervisor, 584-594, 596.

WOODBRIIDGE TOWNSHIP.

C. Lamphere, supervisor, 594-595.

ALLEN TOWNSHIP.

J. M. Deye, clerk, 596-597.

KALAMAZOO COUNTY.

KALAMAZOO.

Claude Carney, 212-215.

E. F. Curtenius, county clerk, 514-546.

R. H. Elwell, registrar, 546.

First precinct, first ward.

W. C. Hipp, inspector, 202.

J. R. Rockwell, clerk, 500-501.

Second precinct, first ward.

Jesse Wilkins, chairman, 202-203. | F. A. Newell, inspector, 497-500.

Third precinct, first ward.

N. B. Wheeler, inspector, 194-196. | Norbert Wheeler, chairman, 501-503.

Fourth precinct, second ward.

C. H. Little, inspector, 188-190. | C. H. Little, inspector, 503-505.

Fifth precinct.

Richard Early, inspector, 201-202. |

Sixth precinct.

Frank Flaitz, inspector, 196-198. |

Seventh precinct, third ward.

Harriet Marsh, 183-185. | J. B. Chase, chairman, 487-492.
W. E. Geary, inspector, 206-210. | B. O. Bush, inspector, 513-514.

Ninth precinct, ninth ward.

E. E. Labadie, inspector, 203-205. | F. C. Walters, deputy clerk, 507-508.

Tenth precinct, fourth ward.

A. T. Ten Busschen, alderman, 186-188. | F. B. Godfrey, inspector, 505-507.

Eleventh precinct, fourth ward.

L. Hollander, inspector, 210-211. |

Twelfth precinct, fifth ward.

B. F. Van Blarcom, alderman, 205-206. | F. C. Waterman, inspector, 509-510.

Thirteenth precinct.

| Ernest Wise, clerk, 510-511.

Fourteenth precinct, fifth ward.

Roland Fairchilds, inspector, 199-200. | Geo. Thayer, inspector, 511-513.

Fifteenth precinct.

Ernest Wise, inspector, 198-199. |

TEXAS TOWNSHIP.

W. W. Allen, justice of the peace, 185-186. | W. W. Allen, justice of the peace, 494-497.

ALAMO TOWNSHIP.

Alvord Peck, justice of the peace, 190-192. |

VICKSBURG.

W. J. Yates, justice of the peace, 192-194. |

PORTAGE TOWNSHIP.

H. B. Sweetland, township clerk, 194. |

COOPER TOWNSHIP.

| W. F. Huntley, inspector, 492-494.

COMSTOCK TOWNSHIP.

| W. E. Boyd, clerk, 508.

CLIMAX TOWNSHIP. •

Huber, Elwell, inspector, 153-155. |

The CHAIRMAN. While Mr. Fellows is making his argument, have you anybody that you could send over to the clerk's office and bring us those tally sheets, ballots, and so forth?

Mr. SMITH. I do not think I have anyone I could send.

The CHAIRMAN. How big is it?

Mr. FELLOWS. If they could bring the papers from one township, the statement of the votes, the poll list and tally sheet, it would be sufficient, I think.

The CHAIRMAN. I will send for it here. You may proceed, Mr. Fellows.

ARGUMENT OF MR. GRANT FELLOWS, ATTORNEY FOR HON. JOHN M. C. SMITH.

Mr. FELLOWS. I challenge attention to the act of 1912, which seems to be plain that this is what gives authority for the ladies being within the rail in the various precincts in Kalamazoo.

The CHAIRMAN. We have read that act, and I think we agree with your construction, so you may pass that.

Mr. FELLOWS. I might say to the committee that in addition to the one precinct that I called attention to, there were several precincts which I wish to call attention to in our brief in the same city, where the women were behind the polls, but I do not think that except in the one precinct there is any evidence that they distributed ballots. I will try and get through within the three-quarters of an hour allotted to me, if I possibly can.

The second ward of the city of Charlotte raises this question: In this ward there was a man, I think he was either an alderman or a supervisor, at least he held such an office as made him a member of the board of inspectors here, named Hamilton. Mr. Hamilton was ill when he arrived there that morning, and along about noon he became so ill that it was not possible for him to remain any longer. A Mr. John C. Nichols was called in to take the ballots. I think I have described how our ballots are arranged, that one inspector initials them, another hands them out, and another takes them from the voter as they go from the booth and deposits them in the ballot box.

Mr. Hamilton was receiving ballots, taking them and depositing them in the ballot box. Mr. Davis, if I am not incorrect about the name—but that is not material—was handing out ballots, and Mr. Hamilton became sick. Mr. Nichols was there and the inspector, whoever he was, called upon Mr. Nichols to receive ballots. Now, Mr. Overmeyer, a witness called by the contestant, testified, on page 50, that he thinks he was receiving ballots for an hour and a half. All of the other members of the board, the man who was challenger, testified. Mr. Nichols says that he received five or six or seven votes. Another witness says he may have received three or four. Another one says six or seven. But an emergency arose there in that precinct, and while that was the condition, because it was the noon hour when, as we all know, people vote on their way home to dinner and on their way from dinner—because out there we have dinner at noon—they came in in a rush, and to take care of that emergency, Mr. Nichols was called in. I do not recall that there has been any holding by our court upon that question that it would vitiate the election. In fact, I think we can say the general rule is this, as I understand it, in reference to provisions of the election laws of the various States of the Union—and I am quite frank to say that our State has been quite vigorous in its holding—that provisions of the election law were mandatory. But as I understand, there is a distinction, a definite distinction, between those matters and provisions which precede the putting of the ballot into the box which precedes its preparation and those provisions which go to its canvassing, the count after the vote is taken. In other words, after the elector has carried out his wishes, without any violation of the election law, election precincts can not be thrown out and the elector disfranchised by reason of defects that existed after that. I think that is a wise rule and I think that is the law.

Mr. STEPHENS. Have you any authority to that effect?

Mr. FELLOWS. I think McCrary on Elections lays down that general doctrine. I am not able to give you the citation if it is in the brief.

Mr. STEPHENS. You have no Michigan case on that?

Mr. FELLOWS. No; I am quoting my general understanding of the rule, rather than a Michigan case.

The CHAIRMAN. Do you not think your contention is directly opposed to the decision in the case of McCall v. Kirby?

Mr. FELLOWS. No; the authority in that case consisted in an unauthorized man being where he could hand out a ballot to the voter and did not. The infirmity in the Kirby case was not in the canvassing; it was not in the return or the count of the vote, but it was in the method used to get the ballot into the box, and preceded the

voter going in to vote, and it was held that that provision was mandatory. So the Rhinehart case—when I get to the Rhinehart case it will be shown that there was something which preceded the ballot going into the box, and was not something with reference to its handling. So, as I say, an emergency arose, and the most that could be done, I apprehend, so far as the second ward of the city of Charlotte was concerned, would be to determine how many of these illegal votes there were, under the Reynolds v. May case, but in our brief we have taken up and discussed the testimony of these various men who were called as witnesses, as against the testimony of Mr. Overmeyer alone. Now, while the courts of Michigan—I am not going to undertake to say that I remember all the decisions of the court, and the court may have passed upon it and I not be familiar with it, but Congress has spoken upon this very same subject—or at least the Committee on Elections, in case of Williams against Settle, as cited in our brief, page 44, and found in the second volume of Hinds' Precedents, section 1049:

"At this precinct ballots were cast for James A. Bullock for the office of county surveyor. He was one of the judges of election, but told the electors on election day that he was not a candidate and would not accept the office if elected. The proof in the case shows that the fact that he was one of the judges of the election did not have any effect whatever on the result of the congressional election. The proof is overwhelming that the election was properly conducted and the result honestly certified."

So that the doctrine seems to be laid down here as to the fact that a man who is a candidate does, although the law says he shall not, act; that it does not disfranchise the voter and vitiate the ballot. That was the case where, as I understand, Bell sat during the entire election. In the case that we have under consideration, Mr. Nichols was only present, as he testified, and as the rest of them testified, for 10 or 15 minutes. Mr. Hamilton said that as soon as he got home he telephoned for a man that took his place, a Mr. Barber, who came right down and was sworn in and continued to act. I think that we all realize that emergencies arise in the conduct of every election, and in those emergencies, the men who are intrusted to carry out the law try to get along as well as they can, so that the election machinery goes on and people are elected, and people hold office where possibly the strict letter of the law is not complied with.

Now, we come to Carmel Township, which involves the proposition of votes being counted at 2 o'clock. The way that arose was this. In the State of Michigan we have an exceptionally large ballot. We have not only an extra party—one more than we thought we needed, anyhow, but in addition to that, two justices of the supreme court, who were usually elected at the spring elections were elected by reason of a vacancy existing, so that the ballot was much larger than ordinarily. Now, the kind of ballot box that they had in Carmel was—I think it is described as a sort of a churn affair, where the ballot is put in between two rollers and rolled into the box. They discovered along about noon that this box was getting full, and they had to do something in order to take care of the situation which arose there. Now, Mr. Huber was called upon—and I want to read his testimony at page 291, which shows just what took place, and I might say that in this record, if you should read it from beginning to end, you will find that there is not a very large amount of conflict [reading]:

"Q. Were you a member of that election board in that township on the 5th day of November, 1912?—A. Yes, sir.

"Q. Did you serve all day?—A. I did.

"Q. Did an emergency arise along about 2 o'clock of that day?

"Mr. ADAMS. I object to that as assuming something and leading and calling for the conclusion of the witness and as incompetent, irrelevant, and immaterial.

"A. I know the ballot box was being filled.

"Q. What kind of a ballot box did you use?—A. A metal box 12 inches in diameter and 28 inches long.

"Q. How were the ballots put in the box?—A. There was a slot on top and two rollers that worked opposite each other and a crank to roll them in the box.

"Q. Was it so constructed that you could slip a ruler or anything of that kind in the slot to jam the ballots down?—A. It was not.

"Q. Along about 2 o'clock the box became full?—A. Yes, sir.

"Q. So it would not work?

"Mr. ADAMS. I object to the question put by the attorney general and the one before it as leading, and I take an exception to this mode of examination.

"Q. When that occurred what was done, was there any discussion before anything was done?

"Mr. ADAMS. I object to that as leading.

"A. The board had talked the matter over at noon and considering the size of the ballots and the size of the box, the box would become full before night. We had two small boxes about 6 by 6 by 12 inches, I think, inside measurement, one was for the woman suffrage ballot and the other was empty.

"Q. What was there in that one that was empty, was it large enough to take care of the rest of the election that day?—A. It was not; it had a partition across in the center and it left about 6 inches at each end to put in small ballots. It wasn't anything more than for the amendments to the constitution.

"Q. Now you say you discussed that at noon?—A. Yes, sir.

"Q. Among the members of the board, you mean?—A. Yes, sir.

"Q. Did you discuss it with anybody besides the board?—A. We talked the matter over with those present—

"Mr. ADAMS. I object to what he discussed with anybody besides the members of the board as incompetent, irrelevant, and immaterial.

"A. There were a number present, among them Mr. Spencer.

"Q. Who was he?—A. An auctioneer.

"Q. Was he quite active at that campaign?

"Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial and calling for the conclusion of the witness.

"A. I couldn't say how active he was on that day; he was a Democrat.

"Q. Where did he live?—A. He lived in Charlotte.

"Q. Did he have any business other than politics out there that day?—A. Not that I know of.

"Q. Did you discuss it with him?—A. We talked the matter over and said we were up against a proposition.

"Q. Did you discuss it with anybody besides Mr. Spencer?—A. With Mr. Ellis, the chairman of the Democratic county ticket.

"Q. Was he also a candidate on the Democratic ticket?—A. Yes, sir.

"Q. What did he say about it?

"Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial and hearsay.

"A. He said as far as he was concerned he couldn't see any other way out of the difficulty.

"Q. Was this discussion had by you for the purpose of finding some means to get along with the emergency you had?

"Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial, and hearsay.

"A. It was.

"Q. What did you finally determine upon?—A. We concluded the best way was to call in several extra clerks and proceed with the count, so I swore in William Clements and Cortez Cushing as extra clerks.

"Q. What was their politics?—A. One was a Democrat and the other was a Republican.

"Q. They were men of standing in that community?

"Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

"A. I always had great respect for their integrity.

"Q. You had at that time no doubt but what they would honestly act in the position they were called upon to act?—A. I had not.

"Mr. ADAMS. Objected to as incompetent, irrelevant, and immaterial.

"Q. After they were sworn in what was done?—A. We proceeded with the emptying of the ballot box on several tables. Mr. Cushing proceeded with the sorting of the ballots, placing the straight Democratic in one pile and the straight Republican in another and the splits in a third pile. We proceeded to count the Republican straights and rolled them in a roll and put the number on the back and laid it up on a shelf and the same with the Democratic votes. Then I swore in Mr. Clements and we proceeded with the count.

"Q. Of the splits?—A. Yes, sir.

"Q. Who did the reading?—A. I did.

"Q. Did you correctly read the ballots you read?—A. I did.

"Q. And gave to each man that had a vote thereon the vote in the tally?—A. I did.

"Q. Had you finally completed the count when the time came to close the polls?—A. We had not.

"Q. How nearly had you completed it?—A. There were probably 8 or 10 and maybe a dozen ballots left yet.

"Q. After the ballots were closed did you complete the split tickets on hand that were cast after 2 o'clock?—A. Yes, sir.

"Q. Then what did you do?—A. In the interval we completed the 2 o'clock count and the rest of the board had sorted the ballots cast from 2 o'clock on and they passed the split votes to me and I kept on reading."

Now it is not necessary to go further, but an emergency arose there. The counting of these ballots was completed before the election was over, so no result was given out or anything of that kind.

Now let us turn to the township of Reading, where an emergency also arose. The provisions of the law in regard to ballot boxes in the State of Michigan is that there shall be a suitable ballot box provided with a lock and key. Now in regard to the township of Reading, I want to quote from page 584 upon this proposition. Mr. Galloway was the supervisor down there [reading]:

"Q. Is the vote of that township reasonably large?—A. Yes, sir; usually when the whole vote is out, I think it has been as high as 640.

"Q. At this election November 5, 1912, the vote was somewhat larger than usual?—A. Yes, sir.

"Q. You had provided a ballot box for the ballots for the candidates and also for the constitutional amendments?—A. The township has four ballot boxes. Three of them were in a condition to be used, and the fourth one, I think, the lock was broken and was not used.

"Q. You had two constitutional amendments besides the regular ticket for the candidates?—A. I think so; yes, sir.

"Q. Now, during the day did the ballot box which you were using to cast the ballots for the candidates become full?—A. About 11 o'clock I called the attention of the board that we would not be able to put all the ballots in that box, and they thought we had better take some means to procure some other box, so I called the village marshal—he stood outside of the railing—and had him procure a box with a slot cut in to admit the ballots, and he did so.

"Q. What was it?—A. It was a little shoe box I think, probably 30 inches long, 18 inches deep, and 14 inches wide.

"Q. He brought it to you with the slot cut in?—A. Yes, sir.

"Q. Was it securely nailed on when he brought it?—A. Yes, sir.

"Q. What was done with it after he brought it?—A. It was placed under the table until necessity compelled us to use it, which I think probably might have been somewhere about 1 o'clock.

"Q. Then what was done?—A. Then we took the other box and pushed it to one side and used this box to deposit ballots in.

"Q. Was there any lock on it?—A. No, sir.

"Q. Now, after the polls had closed at 5 o'clock how did you get the shoe box open?—A. There was a hatchet there and we took the hatchet and pried the top off.

"Q. Then proceeded with the canvass?—A. Yes, sir."

Mr. FREAR. Was there any evidence there to show whether or not there was anything in this box when they began?

Mr. FELLOWS. No, the box was nailed up.

Mr. FREAR. Was the box nailed up when they handed it to the inspectors?

Mr. FELLOWS. Yes, sir. Now, there was not anything in either one of these cases with reference to the kind of ballot box that should be used.

Mr. FREAR. What was the vote of those two precincts?

Mr. FELLOWS. In Carmel Township Mr. Smith received 137 and Mr. Carney 82. In the Reading precinct, Mr. Smith 122 and the Carney vote was 183.

Mr. FREAR. What did they do in the other precinct?

Mr. FELLOWS. They emptied the ballot box out, and used the same ballot box, and appointed a Democrat and a Republican to count, and those two extras acted as clerks.

Mr. BORCHERS. What was the vote in the shoe-box case, where they emptied out the ballot box?

Mr. FELLOWS. Smith 122, Carney 183. That was Reading. In Carmel Township where they counted them, Smith received 137 and Carney 82.

Mr. FREAR. The question I asked there was whether or not they made any examination of the box before they started to deposit ballots in it—the shoe box?

Mr. FELLOWS. No, they did not.

Mr. FREAR. The record shows that the box was brought in nailed up.

Mr. FELLOWS. Yes. In other words, the shoe box did not comply with the law any more than counting the ballots before the polls closed did. They did not comply with the strict letter of the law in either case.

Mr. ELDER. Suppose they had no box sent them at all to put the votes in. What would they do about holding the election?

Mr. FELLOWS. Under our law, the local board provides its own boxes. The clerk is required to provide a box for them.

Mr. ELDER. Does the law say what sort of a box it shall be?

Mr. FELLOWS. The law provides that it shall be a suitable box, with a lock and key. The shoe box did not have a lock and key and to that extent did not comply with the

law. In other words, emergencies arose in these two cases and they were handled in different ways. In one precinct the counting commenced before the law said it should commence, and in the other case they used a ballot box that the law would not permit them to use.

Mr. ELDER. The same question arises in counting the ballots before the election was closed as in using an improper ballot box. One is as illegal as the other. The only trouble is, as Mr. Frear has suggested, that nobody examined that shoe box and knew what was contained in it before they began to deposit the ballots.

Mr. SHIELDS. Under our law, no ballot or a facsimile of a ballot, except the yellow printed instruction ballot, is furnished at the election booth. There is no way, from the time they come from the printer up to the time they are deposited in the ballot box, for anybody to get a ballot except one of the election officers.

Mr. FREAR. The practice in many places is to take the box and open it and turn it over in the presence of whoever is there when the voting begins, to show that no ballots have been surreptitiously put in the box.

Mr. FELLOWS. Now, in Cambria Township there was also an emergency. It must be borne in mind, I think, that the election that was held this year, so far as Michigan was concerned, was a strenuous election. Some men became sick and some men became incapacitated otherwise, and that is illustrated in the Charlotte matter—the man who had been sworn in as an inspector became ill. In regard to Cambria Township I will read from the testimony of Mr. Payne, page 75 of the record [reading]:

"Q. I never had an opportunity to talk with you, but you are a resident of Cambria Township?—A. Yes, sir.

"Q. How long have you lived there?—A. Thirty-three years.

"Q. Do you live in the village?—A. Yes, sir.

"Q. Do you remember the occasion of there being an election last November 5?—A. Yes, sir.

"Q. Were you in Cambria that day?—A. Yes, sir.

"Q. And voted?—A. Yes, sir.

"Q. After the polls were closed did you assist in tallying the votes?—A. Yes, sir.

"Q. Whose place did you take?—A. Mr. Fink's."

In this township Mr. Carney had a plurality of 65. The point here is that the ballots were counted by a man who was not sworn in at all, and was not a member of the board.

Mr. SHIELDS. He was a man who was tallying, he did not touch the ballots.

Mr. FELLOWS. But he passed upon the returns as made [reading]:

"Q. He was the township clerk?—A. Yes, sir.

"Q. About what time in the evening was it you took his place?—A. I should judge about 9 o'clock, about; I just came out of the store; I think about 9 o'clock.

"Q. You were not sworn before you commenced tallying?—A. No, sir.

"Q. And had not been sworn to attend and act as clerk or inspector up to that time?—A. No, sir.

"Q. Now, you tallied for Mr. Fink and in his place for about how long?—A. I should judge an hour.

"Q. Did you tally for anybody else?—A. Yes, sir.

"Q. Who?—A. Mr. Smith.

"Q. He was the other clerk of the election?—A. Yes, sir.

"Q. How long do you think you tallied for him?—A. Well, of course, I don't know and can't call to mind off hand. I should say I worked an hour for Mr. Fink and was off an hour, then took Mr. Smith's place possibly an hour; I will not say.

"Q. Were you there when they were finally through?—A. Yes, sir.

"Q. You were not asked to and did not sign the returns as clerk?—A. No, sir.

"Q. When you took Mr. Fink's place you used his book?—A. Yes, sir.

"Q. And when you took Mr. Smith's place you used his book?—A. Yes, sir.

"Q. Who read the ballots?—A. Mr. Henry Fink, Mr. Lande, and Mr. Rogers.

"Q. Three inspectors instead of two?—A. Yes, sir."

So that in that precinct there was an additional and unauthorized inspector.

In Carmel Township an emergency arose which was taken care of in one way. It was not in a way that the law directs. In Cambria an emergency arose and it was taken care of not in a way that the law directs. Over in Reading an emergency arose that was taken care of not in a way that the law directs. So that if one precinct has to be thrown out because the law was not followed, it would follow that the other precincts must be thrown out also.

The CHAIRMAN. Those defects that you are relying on, do they relate to defects which occurred before the polls closed, or in the counting of the ballots?

Mr. FELLOWS. Some of them were before the polls closed, and some were in the counting of the ballots afterwards.

Mr. FREAR. There were two precincts in which there were six inspectors instead of eight?

Mr. FELLOWS. That was in Sunfield Township.

Mr. BORCHERS. What was the vote there?

Mr. FREAR. Thirty-nine and ninety-six. I think.

Mr. FELLOWS. Now, in regard to the township of Winsor. We have a former holding of our court with reference to the initial being on the right-hand corner of the ballot, and in the opinion of Justice Hooper it was held that that failure did not vitiate the poll. In the Rhinehart case, which arose in the election contest over the office of county treasurer, county of Cass, it was held that where an initial was put in the perforated corner, that was not an act initialing the ballot, and that was upon the theory that the ballot was not initialed when it went into the ballot box. You all understand that the perforated corner is torn off before the ballot is put into the box, and, of course, when that was torn off it took off the initial. There is no question as to what the Rhinehart case holds, and if you see fit to follow the Rhinehart case in the township of Winsor, the township is disfranchised and thrown out. Personally, I think my friend Shields knows that I do not approve of the Rhinehart decision. My partner, who is a Democrat, would have been a Member of Congress if it had not been for the Rhinehart case. I directed the preparation of a bill in my department to take care of that situation by requiring that upon each ballot there shall be printed these words, "Inspector's initials here," and then a dash, so that in future elections we are not going to have that question occur.

Mr. SHIELDS. Provided they follow the printed instructions.

The CHAIRMAN. In my State the board of supervisors of elections have a facsimile of their names printed upon each ballot.

Mr. FELLOWS. They must be initialed, by our law. I think our State has gone further than any other State with the exception, possibly, of Pennsylvania. I think in Pennsylvania they have held that where the initialing was done with a lead pencil, and the requirement stated that it should be done with ink, it was held that that was not initialing within the law.

Here is the provision: "No ballot shall be distributed by any person other than one of the inspectors of election, nor in any other place except within the railings of the voting room to electors, and no ballot which has not the initials of a member of the board of electors by said member on the back thereof shall be placed in the ballot box." Now, if one provision of that act is mandatory, as the Rhinehart case holds, then the other provision of the act is mandatory. And I call attention upon that proposition to page 576 and page 577 of the record. This is the township of Reading, page 577, page 576. I will begin down at the bottom of the page.

Mr. FREAR. What is the point you have in mind?

Mr. FELLOWS. The point is that they went outside and distributed ballots and then brought them in and deposited them in the ballot box [reading]:

"Q. Were there any electors to whom their votes were delivered by the members of the board at any other place than within the railing?—A. Yes, sir.

"Q. Go ahead and tell the circumstances of that.—A. Well, our election took place on the second floor."

The CHAIRMAN. Was there any provision in your election law for a situation of that kind?

Mr. FELLOWS. No, there is absolutely none [reading]:

"Q. In the town hall?—A. Yes, sir; in the village hall. They could not get up there, and they had spoken to some one, and asked if there was not some way they could vote.

"Q. So that question came up before the board?—A. Yes, sir; and they agreed, all the challengers did, and there was no objection made whatever."

So they agreed to take a number of ballots down there and let these men mark them and bring them back and put them in the ballot box. It is in the same identical statute that the ballot must be initialed that this provision occurs that ballots can not be distributed outside. Now, would any court that has the power to administer equity be doing an equitable thing by disfranchising the voters of either of these townships? I respectfully submit that it would not, and that this committee, sitting as it is, judges of the election qualifications of the membership of the House, could not do that thing which in the absence of fraud will disfranchise two of the election precincts up there. I do not believe that there is an election precinct in the three election districts—I doubt if there are very many election districts in the State—where the law is literally and absolutely followed to the letter. So much for Winsor Township.

We now come to the next precinct, the second ward of Battle Creek. Now, I have discussed Climax, and the situation in Battle Creek was exactly the same as it was in

Climax. In Climax they consented that the ballot box should be opened and the ballots counted. In Battle Creek they alleged that there was absolutely no power to correct this mistake.

Now, did one of these files come over with these blanks in it, Judge Post?

The CHAIRMAN. Well, they were here. I do not think any blank ballot is here.

Mr. FELLOWS. I mean the returns. The papers that constitute the returns.

Mr. CARNEY. There is no blank official ballot in any of the returns. There is a copy of the instruction ballot somewhere, a yellow ballot. It is impossible to get one of the originals. This is a sample.

Mr. FELLOWS. Now, you will see there is returned a statement book, poll book, and tally sheet book. These are returned—before I take that up last there may be some confusion there because I do not know but counsel may cite some authorities—some holdings of our supreme court that the board of supervisors of a township acting as county canvassers upon a local option election can not send back and have returns corrected. That is, by reason of the fact that this book is not returned in a local option election. I may say that our courts have held that the board of supervisors in a local option election can not have the returns corrected by the inspectors.

Mr. FREAR. Please name the particular book, so that we can have it in the record.

Mr. FELLOWS. The tally sheet. It is not required to be returned under the local-option election law. I do not know why it is they keep making mistakes over in Battle Creek, but we had this question once before, and I held under the local-option law that we could not send out and have the returns corrected, although it was an apparent mistake, and I held that this latter opinion was not promulgated, although the other opinion was promulgated; that they did have a law to go into court in other cases and have mistakes corrected. That is under the local-option law, and if you will make a search you will find some decisions where it was held that under the local-option law election returns can not be gone back of. But under the general election law, section 239 of this pamphlet, it is provided [reading]:

“(239) SEC. 3665 (sec. 4). The said board shall then proceed without delay to canvass the return of votes cast for all candidates for office voted for and all other questions voted on at said election, according to the returns filed in the office of the county clerk by the several boards of election inspectors of the various voting precincts in the county, and the returns or tally sheets filed with the board of canvassers by the central counting board in counties where a central counting board is provided for counting the ballots cast in said county or any part thereof in lieu of their being counted by the election inspectors of the voting districts. If it shall be found upon the convening of said board of canvassers that the returns from any of the boards of election inspectors of the several election districts, or the returns of such central counting board, are missing, incomplete, or incorrect, or for any other reason it is found necessary, then said board of county canvassers shall have power to adjourn from day to day until said returns shall have been procured or corrected. Said board of canvassers are hereby empowered to summon the person or persons having the boxes containing the ballots cast at such election and the keys and seals of said boxes, or, having such returns or the poll books or tally sheets used and made at such elections, to bring said boxes, keys, seals, returns, poll books, and tally sheets before said board, and said board of canvassers are authorized to open said boxes and take therefrom any books or papers bearing upon the count and return of the election inspectors of such election districts or the returns of such central counting board, but they shall not remove or mark the ballots therein.”

Mr. FELLOWS. This situation arose in Battle Creek. I have here, first, the tally book that shows the number of men who voted at that election, and in Battle Creek that tally book showed that 375 men had voted; that was returned and was before this board.

They also had the ballot statement book, which showed that the presidential electors received 374 ballots; that is, the combined vote on the presidential electors was 1 short of the number of men who had voted. That showed that the ballot cast from governor down, the total vote was 114 or 115—I am not sure—the papers are correct as outlined in our brief. They found, in other words, that they had not made a return. Then they took this tally sheet, and this is what the county canvassing board had a right to do, and they showed upon the tally sheet all that has been tallied, and it was found, as a matter of fact, that none of the candidates had received credit for the straight votes cast in the precinct, and as it affected the parties to this contest the returns show that contestant had received only 23 votes and contestee had received 31 votes out of a total of something like 375. They of necessity knew there was a mistake, and Carney came there and protested about their right to have that corrected.

The inspectors came in, and I challenge your attention to where they made their first return, and they made the correction. They saw upon the back of the bundle

of ballots—they did not open up the ballots, nor did they count the ballots—this is for the correction of a patent mistake—they saw there was on the one bundle the figures 66 “R. Straight,” and upon the other bundle were the figures 38 “D Straight” that had not been counted, and those were all certified to and put in the original votes, Mr. Carney protested that and Mr. Smith was advised of it, and then they subpoenaed in these men and women, who came in and said, “In that ballot box there is a statement of the result of that vote. I made that memorandum,” and they went into the ballot box and found that statement, and he was required to take a blank tally and go into another room and make a statement in, I think, the records show, a certain number of minutes in which to make a correct statement of what the vote was; and he went in there, or this board of inspectors went in there, and they came back in return and showed just exactly what the vote was, and it corresponded to a dot with the figures that had been put in in red ink the first time.

In other words, there was a mistake in making the return under the local option law, and, as I say, counsel may come and cite the local option case, or if you make an independent search you may find this local-option law in which the court has held and it was held in the Calhoun County case—this same county—that the board of supervisors could not call in the inspectors and have the returns corrected, and in that same case the old law in the City of Battle Creek, where the mistake was patent, the board of supervisors was the proper tribunal. I did not say that in that opinion, but in another opinion, which I think was not promulgated because of the fact that in the meantime they had started a suit in court; I did hold that they did have the right to bring their bill in equity and have the mistake corrected.

The way this thing arose occurs in the testimony of Ray Hart, which is found upon page 443. I will not stop to read it, but it showed that Ray Hart was the county clerk at this time. I think Mr. Smith read this evidence substantially and challenged your attention to it in the record [reading]:

“Q. What exhibit is that?—A. It is marked ‘Exhibit 41.’ And one tally sheet marked ‘Exhibit 42,’ and a statement book marked ‘Exhibit 43.’

“Q. Witness, did you examine those returns before the board of county canvassers met?—A. I did.

“Q. Did you discover any discrepancy in them; if so, what?—A. I did.

“Mr. ADAMS. Wait a minute; I object to that as incompetent, irrelevant, and immaterial, and the returns speak for themselves.

“The WITNESS. I discovered that the straight vote on each and every political party outside of the presidential electors hadn’t been figured into the results of the various candidates of each political party.

“Q. Beginning where?—A. (Witness refers to book.) The governor. I think, was the first.

“Q. From governor down, was it?—A. Yes, sir; each political party.

“Q. When the board of county canvassers convened, did you call their attention to that discrepancy?—A. I did.

“Q. What is Exhibit 44?—A. The poll book from the second precinct of the second ward.

“Q. By that poll book how many votes were returned as having been cast in that precinct?—A. Three hundred and seventy-five.

“Q. How many votes were shown by Exhibit 42 to have been cast for the presidential electors, the totals?—A. I will have to figure that.

“Q. Doesn’t the book show? Take the Republican.—A. The tally sheet or Exhibit 42?

“Q. From them does it appear how many votes were cast for President?—A. For each political party, but not collectively; I will have to figure that.

“Q. Give us that.—A. Collectively?

“Q. Yes; how many for the Republicans and Democrats, one elector for each political party, the highest number anyone received?—A. Ninety-six is the highest there and 57 is the highest there. For information, may I ask, do you want this question answered the total number collectively or the total number of each political party—the maximum number of each political party?

“Q. The maximum number of each political party?—A. For the Republican electors, the highest number was 96; for the Democratic electors, 57; the Prohibition electors, 4; Socialist electors, 108; Socialist Labor electors, 18; National Progressive electors, 91; a total of 374.”

That substantiates that just exactly as I have stated it. They found the vote for presidential electors to be 374; they found the number of men who had voted to be 375; they found that the vote returned was only about, I think, either 114 or 115, commencing with governor down, and the provision of the law expressly permits this to be done, and expressly permits the use of any papers, but is designed to pre-

vent a recount under this statute. If they want to have a recount—and I doubt very much as to whether a congressional recount could be had even under the statute—they take another section, but this section permits the correction of a palpable error. There was a palpable error in Battle Creek, and there is not any question about it. The vote was 200 votes deficient on all the officers below presidential electors.

They sent these inspectors in there, and these inspectors appeared here in this record. They are apparently clean men, and there does not seem to be any question about the actual fact of a mistake having been made, and that mistake ought to be corrected.

Mr. FREAR. How did that error first appear—when they first sent that in?

Mr. FELLOWS. It appeared when they first sent it in from the return for all below the governor or all below the presidential elector—just the split vote.

Mr. FREAR. Where does that appear?

Mr. FELLOWS. That appears in the testimony—

Mr. FREAR. What record does that appear in—the tally sheet?

Mr. FELLOWS. It appears in the tally sheet; that is, just the tally of the split vote.

Mr. FREAR. Nothing was left out of the envelope when sent in?

Mr. FELLOWS. Everything was there.

Mr. FREAR. Another question, if you will pardon me, right there: Mr. Shields made a statement to us that was rather involved on the position of a Congressman; that is, that there is no remedy that he has under your statute, excepting as he may bring it in this forum. He has no right to appear in court.

Mr. FELLOWS. The court held in the MacDonald case that he was without remedy in the State court and that he must bring it here.

Mr. BORCHERS. I would like to submit a proposition to you that came up the other day—I do not remember whether you were here or not—when these envelopes were brought in here; we examined this printing in the upper left-hand corner in this way, and I stated to Judge Elder that it was contrary to the law. I would like for you to examine it and answer the question whether, in your judgment, that complies with your election law.

Mr. FELLOWS. You mean the instructions or the act?

Mr. BORCHERS. I mean that printing.

Mr. FELLOWS [reading]: "This envelope contains election returns as follows: One of the original tally sheets, 1 of the tally books, and 1 of the statement of the vote that resulted from the election held at Grand Ledge in the second ward of Eaton County, State of Michigan."

In what regard do you criticize it?

Mr. BORCHERS. Do you think that complies with your laws—the instructions to be followed with respect to the statement and the tally sheets, etc., after the election?

Mr. FELLOWS. Yes; I think this is for the county clerk. I think the township clerk must put in—

The CHAIRMAN. Should not each book be sealed in a separate envelope?

Mr. FELLOWS. Oh, no.

Mr. BORCHERS. I brought that up the other day, and we decided it should be, and I want to read this law a little bit, if the chairman will permit.

Mr. FELLOWS. That is not the way we construe it either.

Mr. BORCHERS [reading]:

"The inspectors shall then prepare a statement of the result in duplicate, showing the whole number of votes cast for each office, the names of the persons for whom such votes were given, and the number each person received, in which statements the whole number of votes given for each office and the number given for each person shall be written out in words at length. Such duplicate statements, when certified by the inspectors and duly signed shall be delivered to the township or city clerk and shall by said clerk be, within 24 hours after the result is declared, delivered in person or immediately forwarded by registered mail, one copy to the board of county canvassers in care of the judge or register of probate, and the other, together with one of the original tally sheets, to the county clerk, which said statements and tally sheets shall be placed in separate envelopes and sealed by said inspectors before their delivery to the township or city clerk."

Mr. FELLOWS. The way that is carried out in our State—the question never has been raised in our State—these envelopes are prepared by our secretary of state under his instructions and direction. The way we figure that is, that one set of these papers shall go in one envelope and another set of them shall go in another envelope. One envelope is addressed to the county clerk, at the county seat, and the other envelope is addressed to the board of county canvassers, in care of the judge of probate or the probate register.

Mr. BORCHERS. This says they shall be placed in separate envelopes.

Mr. FELLOWS. We never construed it that way.

Mr. SMITH. There were two returns, one just a facsimile of the other—another one just like this in a separate envelope—that goes to the probate court, and this one to the county clerk. They are in separate envelopes.

Mr. BORCHERS. It further says that said statements and tally sheets shall be placed in separate envelopes and sealed by the inspectors.

Mr. SMITH. Tally sheets?

Mr. BORCHERS. That they shall be placed in separate envelopes.

Mr. FELLOWS. If you should construe the law that way, there was not anybody elected in Michigan at that election.

Mr. BORCHERS. That is about my conclusion.

Mr. FELLOWS. There was not a county in the State of which this same thing was not true.

Mr. STEPHENS. I do not think that was the intention of the lawmakers.

Mr. FREAR. That is, two separate envelopes.

Mr. FELLOWS. Our construction of it is that each separate envelope contains the same thing, one addressed to the county canvassers and the other to the county clerk.

The CHAIRMAN. They use the plural of the word "statement" there—statements and tally sheets shall be placed in separate envelopes.

Mr. FELLOWS. You mean to say the construction our election officials have to put upon it.

Mr. STEPHENS. I think that is the proper construction of it, with all due respect to Mr. Borchers.

Mr. BORCHERS. I think it is wrong. The construction is that one is mailed to the probate court.

Mr. FREAR. One set of papers.

Mr. BORCHERS. And then it says the other to the county clerk, and then it says each shall be in a separate envelope—the one that goes to the county clerk.

Mr. FRENCH. I think both the contestee and contestant will agree that that is not the meaning of the law.

Mr. FELLOWS. Yes; I think we will.

Gentlemen, I have taken up and discussed each of these precincts that are involved here. I said on the onset that I did not think that it made so much difference whether the strict provisions of the law of Michigan were adhered to or not, because there were mistakes made in the various precincts in this district, as I think there were made in other districts, and that a strict construction would give Mr. Smith here, as figured out in our brief, something like 400 plurality. We have proceeded, however, upon the theory, or at least Mr. Smith has, that a seat in Congress carries with it a degree of honor. I wanted to come to Congress 20 years ago, and I had a notion that it was an honorable seat, and that a man that was not chosen by his people, his constituents, could hardly feel that he was filling that seat with honor to himself and credit to his people, and Mr. Smith proceeded upon the theory that if the people out there had elected him he wanted to retain that seat, and if the people had not elected him he did not want to retain that seat. There is in this case from beginning to end—an examination of the record will not disclose that there was any fraud perpetrated in this contest—upon either side—no actual fraud.

The question arises as to whether this body, sitting as a tribunal with power to administer either the strict rules of law or equitable rules, are bound to follow the holdings of the Michigan Supreme Court in the Rinehart case and in some of these other cases.

I want to quote what was said in the case of *Lynch v. Chalmers*, in the contest in the Forty-seventh Congress, volume 2 of Hinds' Precedents, at section 959 [reading]:

"It is seriously contended by the contestee that the decision of the Supreme Court of Mississippi construing the sections of the election laws of that State ought to be followed by Congress, and that it is against the settled doctrine of both Congress and Federal judiciary to disregard local laws. This is too broadly assertive and can not be maintained."

Mr. STEPHENS. What is the page?

Mr. FELLOWS. Forty-three of our brief.

Mr. STEPHENS. Thank you, sir.

Mr. FELLOWS [reading]:

"* * * The rule as to all other questions is well stated in *Township of Pine Grove v. Talcott* (19 Wall., 666-667) as follows: 'It is insisted that the invalidity of the statute had been determined by two judgments of the Supreme Court of Michigan and that we are bound to follow these adjudications. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. The question before us belongs to the general

demand of jurisprudence. In this class of cases this court is not bound by the judgments of courts or statutes where the case arises; it must be heard and determined for itself.'

"There is cited another reason why Congress should not be bound by the decisions of State tribunals in regard to the election laws, unless such decisions are founded upon sound principles and comport with reason and justice, which does not apply to the Federal judiciary, and it is this: 'Every State election law is by the Constitution made a Federal law where Congress has failed to enact laws on that subject, and it is adopted by Congress for the purpose of the election of its own Members.' To say that Congress shall be absolutely bound by State adjudications on the subject of the election of its own Members is subversive of the constitutional provision that each House shall be the judge of its own Members, and it is likewise inimical to the soundest principles of national unity. We can not safely say that it is simply the duty of the House to register the decrees of State officials relative to the election of its own Members.

* * * Election laws are or may become vital to the existence and stability of the House of Representatives, and to hold it must show itself open to the natural limit of investigation along the question as to whether an election has been conducted according to State laws as interpreted by its own judiciary would be to yield at least a part of that prerogative conferred by the Constitution exclusively on the House itself."

Mr. FELLOWS. And then it is said [reading]:

"The report of the committee makes this further suggestion:

"That by adopting the machinery of the State to carry on congressional elections this House stands in the nature of an appellate court to interpret these election laws; that it ought not in this view to be bound by the decisions of the State courts at all, unless the reasons given by them are convincing to the judicial mind of the House acting in the capacity of a court."

Recently you had a question up here from the State of Michigan, where there was absolutely and could be absolutely no question as to what the law of the State of Michigan was. I refer to the Young-MacDonald contest, and in the report of this same case, found on page 8 of that report [reading]:

Following that upon the floor of the House it was said by Judge Crisp, and the doctrine laid down by him is the doctrine we are asking shall be applied in this case. In his conclusion he said [reading]:

Then it is urged upon you that you are bound to follow the Michigan rule. I say to this committee, with all due deference, that this committee, if it follows the Michigan rule, does not follow the rule laid down by it in the MacDonald case, and I am asking this committee to follow out the line that was laid down by Judge Crisp and adopted by the House with, as I understand it, but five or six dissenting votes.

I desire at this time to personally thank each and every member of this committee for the courtesy that they have extended to me and have extended to both sides. I think I can speak for both sides. I used to think sometimes possibly after a man got in public office he was a great deal of a partisan there if he was before. In the State of Michigan I have had to deal with some Democrats, and I am willing at this time to go upon record as saying that the Democratic governor of the State and his appointees have worked in harmony with the Republican officials of the State, and I have found Democratic and Republican officials alike trying to find out where the right lay and then do the right thing, and I say to this committee that that is all, upon behalf of the contestee, that we ask, and that is, if you find the right thing and do the right thing—and that can be but one thing—and that will brush aside technicality, and keep in this House the man whom the people up there by their honest votes have elected——

Mr. SHIELDS. Mr. Chairman and gentlemen of the committee, I desire to take but a very short time, if I may, in answer to the argument of my learned friend, and may perhaps ask the indulgence of the committee to listen to Mr. Carney somewhat on certain facts that have been related here.

I confess that I have not the possession of the facts that he has, he having been present at all times, and if I may split what little time there is with him, I will feel grateful. I will try to be short in my reply.

I think I am perfectly justified in calling the attention of the committee to the fact that the legal propositions which we advanced in the opening of this argument have been entirely ratified and accepted by contestee. We certainly have not listened to the learned discussion of our good friend, the Attorney General of Michigan, and the attitude that he has taken in his argument here without all coming to the conclusion that the legal propositions which we advanced to you in the beginning are the law of Michigan and is the law which you should follow, because if I can understand the English language, his argument to you is not what was in the brief, not anything that was presented to us so that we may come prepared upon the line of argument that he

was to follow, but is now an acceptance of our law, and the claim that certain precincts to which you apply the law may be thrown out because it is the law, and certain other precincts favorable to you we shall apply the same rulings to, and these should be thrown out.

Now, gentlemen, I want to be perfectly fair about it. The law in the case that I cited is just as applicable to the Sunfield case to-day as it was last Saturday. The law which I applied to the Winsor ballots is just as applicable to-day as it was last Saturday. The law of Michigan is just as applicable to the second ward of Charlotte, where the soliciting was such that in answer to a query of "Why you are doing this," the reply came, "What are you going to do about it?" It is just the same law applicable to the third ward of Charlotte, where a candidate for circuit court commissioner, John C. Nichols, acted as an inspector for a while. It is the same law to-day that it was last Friday, when we started, and I wish to say frankly that if counsel will show or the members of the committee find any precincts in this third congressional district, in which the same condition existed as was shown in the cases or authorities we have presented, you should throw them out, no matter whom they hit.

We are standing before you fairly and squarely upon the propositions of law, as advanced by us. We are not asking you to apply them to us, and not apply them to anybody else. We have presented to you with the utmost care the facts as they existed in Sunfield, as they existed in Winsor, as they existed in the second ward of Charlotte, and the third ward of Charlotte, and in Battle Creek, in which there is legal argument; and in Climax, and the facts we presented and the law we presented are now uncontradicted.

The only answer is, "Let us go to some other townships, and you suffer as much as we do." When you go to those townships, you must take the same law with you. You must apply the same law there as you have in these districts and in these precincts; but you must apply it to the facts that are found there. You must not carry into the precincts facts from Sunfield or facts from Carmel or facts from Charlotte. You must apply the law upon the facts as they are in that place. We will devote a few minutes to some of those facts.

We stand, as we did the first minute when I uttered the first sentence before this committee, which was, that we stood upon the election laws of the State of Michigan as construed by a Michigan Supreme Court, and upon the precedents of the House that they had, following the State law. Counsel have read, if you please, some of the case of *Lynch v. Chalmers*, 2 Hinds', page 959. I want to call the committee's attention to the same case, and I wish the record to show the citation is not given to Hinds' Precedents, 272, the case of *Lynch v. Chalmers*. If you please, I think that the entire proposition that is now before this board is the most carefully covered and the most carefully analyzed and most carefully considered in that case of any which I have found. And, what do you find? You find a tremendously long majority opinion, set out almost in full by Hinds, and the entire time is taken up in distinguishing and showing that a certain decision of the State Supreme Court was obiter dicta, as to the real question, and that it did not apply, and that because it was obiter dicta we are not refusing to follow State law when they come to the decision. The minority report in the same case, if you please, and you will find a most perfect analysis. You will find there that the proposition that the House has established a precedent of following State laws and decisions of the State supreme courts is unassailable.

I really think, gentlemen of the committee, that the citation in counsel's brief must be wrong, because the case is covered in a very voluminous way beginning on the bottom of page 263, Mississippi case, Forty-seventh Congress. The case is actually in 2 Hinds, section 959. I understood your quotation to be page 559, and I quote from the minority views, and I will say that it is the minority views that have been followed and the difficulty with the majority report in that case was to show that the case was not binding, and therefore did not have to be followed.

"A question whether the constitution of the State of Iowa—

And then they quote a number of cases and quote them as precedents, holding exactly the same way. I do not care to take the time to read it, but I know that no member of the committee will say that the House has not established that precedent, at least until he has read the authority thereon.

There can be no question, as I said in the beginning, that that proposition was squarely up to this committee in that case. There can be no question, if you please, in my mind about what the precedent has been in the past. It is in the power of the House to say whether they followed that line of precedents or not.

The CHAIRMAN. Do you think we followed the decisions of the Michigan Supreme Court in the MacDonald case?

Mr. SHIELDS. Unfortunately, as I look it over, I do not find that the decisions of the supreme court were particularly considered or any attention paid to them in the history of that case. I find in the report—it might have been before the committee, Mr. Chairman, but in the resolution and the preliminary statement of facts I think I am fair in saying that the committee evidently came to the conclusion, because of the waiver of Mr. Young himself, and because of the speech he made in the House at the time of his resigning, that there were 458 votes actually intended for and cast for MacDonald. I have been able to find, but I have not been able to look exhaustively into where the question of what the Michigan court had held or had not held. I may be mistaken. You gentlemen may have composed that committee, and you would know the things that moved you in coming to that conclusion.

Mr. STEPHENS. When Mr. Young made his speech of resignation he stated that he believed that these votes were intended for MacDonald, but that under the laws of the State of Michigan they could not be counted for him.

Mr. FELLOWS. He cited the case of Tinsdale.

The CHAIRMAN. They cited the case of Cicotte.

Mr. FELLOWS. The Cicotte case follows the Tinsdale case.

Mr. STEPHENS. I know that for 70 or 80 years there had been an unbroken line of decisions that votes of that character could not be counted.

Mr. BORCHERS. There was one dissenting opinion in that Cicotte case.

Mr. FELLOWS. That was in the Tobey case.

Mr. SHIELDS. I just want to call attention to the fact that it is only fair to take the position of counsel as it has come here. See their brief, take the conditions that existed and apply the same law, and we have no quarrel with that law. If the facts warrant the application of it in throwing out the districts that is what this committee must do. We both agree now what the law is, and it is therefore merely a discovery of whether the facts in each district justify the application of the decisions of the law of Michigan sufficiently to throw them out. I am just going to call attention—

The CHAIRMAN. There is only this difference between you, you insist upon our following strictly the decisions of the Supreme Court of Michigan in applying the election laws, while according to the other gentlemen we are not bound to do that; but if we may do that, we must go further and we must take into consideration all precincts which have been brought before us by the amended brief.

Mr. SHIELDS. I do not think we differ on what their attitude is at all. They simply say—you have stated it as fairly as I could state it. Let us see where that will bring us. I have covered in my original statement all of these precincts based upon the assistance to voters where there was no soliciting, drawing a distinction like that in the third ward of Charlotte where assistance was given but in connection with soliciting that under the McQuade case would be absolute fraud, and in the other districts, where there was merely the instruction of a voter who had not taken the oath. That is the distinction in the case that is laid down. I want to call your attention to three precincts which counsel named this morning, if I remember correctly, should apply to Albion 2 and Albion 4, which was withdrawn. Is that correct, Mr. Fellows?

Mr. FELLOWS. I think I was mistaken about that.

Mr. SHIELDS. And the Kalamazoo, the seventh precinct. I want to call your attention to record, pages 478 and 479, as to Albion, second ward. The question in that case and objection that he has is that the returns seem to be signed by five inspectors or five officials without designating their title. The testimony seems to show that there were six inspectors, as they are called. Now, the board has to consist of four. In addition to that there are two gatekeepers; in addition to that, in most cases, there is at least one additional clerk, who merely does tallying in some of the wards he has called attention to.

The CHAIRMAN. What does the law provide there shall be?

Mr. FELLOWS. Four. Of course, the city charter may change it.

Mr. SMITH. The city charter is read in here.

Mr. SHIELDS. The city charter provides that there shall be four inspectors. The others should not be called inspectors, and perhaps should not be sworn in as inspectors. The test, however, in all of these, gentlemen, is to look into the facts and see if, while called "inspectors" when sworn, there was an additional man acting as official on that board; and if an additional man, did any of them except the proper ones, perform any duty required to be performed by an inspector. There is the difference.

Take, if you please, in the second Albion—I read from record, page 478 [reading]:

"Q. I call your attention to the vote on Congressman for the third district. I wish you would read into the record what John M. C. Smith and Claude S. Carney received there. A. John M. C. Smith in words 'seventy-nine' and in figures '79'; Claude S. Carney in words 'one hundred and twenty-six' and in figures '126.'

"Q. The other statement book agrees with those figures; look at it.—A. Yes, sir; they are the same.

"Q. I show you Exhibit 68. What is that?—A. The poll book of the general election held on Tuesday, the 5th day of November, A. D. 1912, in the second ward of the city of Albion, county of Calhoun, State of Michigan.

"Q. Turn to where the officers were sworn and tell how many inspectors were sworn in there that day. How many signed the oath of office as inspectors?—A. Six.

"Q. Six inspectors?—A. Yes, sir; do you wish the balance of them?

"Q. Yes.—A. Charles S. Loud was put on as an extra man for the amount of work to be done that day. After the voting was all done and the polls closed, because he had other business, or something of that sort, we excused him.

"Q. He never signed any of the returns?—A. No, sir.

"Q. How many clerks did you swear there? Did this man Loud act as inspector during the whole day until you quit and the poll's closed at 5 o'clock?—A. Yes, sir.

"Q. Then you had six inspectors during the election?—A. I don't know whether you would call them all inspectors or not.

"Q. It shows they were sworn as inspectors, does it not? Look at the oaths of office and read the names of the inspectors as they appear in the book.—A. (reading): 'Charles H. Baker, H. C. Nelson, Otto Conrad, Charles S. Loud.' How am I going to know who wrote that 'inspector' over that word 'clerk'? Somebody erased 'clerk' and wrote in 'inspector.'

"Q. Read it as the book appears.—A. I will explain here by saying some one has drawn a line through the word 'clerk' and written in 'inspector.'

"Q. That is on the page of the oath of clerks?—A. Yes, sir; some one has drawn a pen through that and written in 'inspector.' William Bemer's name is under that.

"Q. What is the next one?—A. I don't know whether I signed that before 'inspector' was written in there or not.

"Q. You would be an inspector, being the supervisor?—A. Yes, sir. The next is Frank Laberteaux. The word 'clerk' has a line drawn through and the word 'inspector' written over it.

"Q. Was Laberteaux an inspector?—A. He was appointed election inspector by the council.

"Q. He signed this as inspector, as it now appears?—A. Yes, sir; I don't know whose writing that is nor when it was done.

"Q. Is that all?—A. As it appears on the book they are all sworn in as inspectors.

"Q. Yourself and Laberteaux were actually inspectors?—A. Yes, sir.

"Q. Then, more than one man swore you all in as a notary public?—A. Yes, sir.

"Q. Read that oath, what you signed.—A. (Reading:)

"I do solemnly swear that I will support the Constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of clerk of this election held on Tuesday, the 5th day of November, A. D. 1912, according to the best of my ability.

"Taken, subscribed, and sworn to before me this 5th day of November, A. D. 1912.

"R. McCUTCHEON, *Notary Public.*"

"Q. Nobody signs there as clerk; nobody takes the oath as clerk?—A. No, sir.

"Mr. FRANKHAUSER. Apparently there was a clerk sworn that did not sign.

"The WITNESS. It would look as though some one filled it all in there and nobody signed it; the notary public signed it in the wrong place. No one signed it there.

"Q. Did you have anyone except the names you have read on the board that day as clerks or otherwise?—A. No, sir."

In the second ward, Albion, the record then shows, without question, that even if they called them inspectors, they only had the right number of officials, that being the clerk, that nobody else acted as inspectors, that nobody touched a ballot, that nobody handled them, that nobody did a thing at that election except the right number of officials, although perhaps one or two of them were wrongly designated.

Mr. FREAR. He says they had an extra inspector, but may have misspoke himself.

Mr. SHIELDS. I can only construe from the language. He called all of them officers; he called all of the officers inspectors, and that he had an extra man, because he probably understood there should have been four, which in effect made five.

Mr. FREAR. They expected to have extra work there.

Mr. SHIELDS. Extra help.

Gentlemen, those are the facts; the rest of the history is there. If—and I state it frankly—that is a parallel case, set forth in any case which we have cited for you, then you should apply it. We do not want to back away from the law nor back away from our position, because we think it is the correct position, in accordance with the law.

If that convinces you upon those facts, act on them. It is the only thing that you can do.

Let us now come to Albion, fourth ward. I understand that that statement that you made as to that is expressly withdrawn?

Mr. FELLOWS. Yes. I marked that in my record for something else, and that is the reason of the confusion.

Mr. SHIELDS. So that the only precinct specifically disagreed upon by counsel was, as I remember, the seventh Kalamazoo, page 478 of the record.

Some of this testimony is particularly interesting as showing how one man can either be so muddled up or swear positively from different angles on the same matter.

One man says he was intoxicated, at least he was not sober. But I am going to read the record, and then say to you that it is your duty, as we view it, if these facts come within the cases the Supreme Court of Michigan has decided as to the election laws, apply them. If the contestant should be seated, well and good, in accordance with those rules; if the contestee should be seated, well and good. But set out the facts upon which you can properly apply the case.

Let us now read this seventh precinct of Kalamazoo, which is the only remaining one of the three to which they say these laws should apply.

Mr. FELLOWS. Pardon me——

Mr. SHIELDS. Of this class.

Mr. FELLOWS. Where the women were within the rail, and they were within the rail in practically every precinct in Kalamazoo. They were unauthorized persons, as I view the law.

Mr. SHIELDS. Then, I say, and I might as well cover that right now——

Mr. FELLOWS. I only specifically called attention to this same condition as existing in other precincts.

Mr. SHIELDS. And I am not going to quarrel with counsel and committee about it. You can search the record to find out what the women did and what, if anything, happened to the election or to any official because they were there, and if you find any facts that warrant you in applying the decision of the law of the State of Michigan and the decisions we have laid down, do it. That is a matter that is in your province, and I am very glad to say that it is up to you to decide, and not to me.

The CHAIRMAN. They show, Mr. Shields, where the women were allowed in one precinct particularly, and they were allowed to take the ballot, hold it, and hand it to the voters.

Mr. SHIELDS. That is not so, and the record, in my judgment does not warrant anybody in coming to that conclusion. That, I will confess, to you, in my judgment, would be a most serious condition and would be exactly the same condition as to the township of Sunfield, if those facts existed, and that is what I mean. If you find as a question of fact in this record that any woman acted in handing out ballots to voters, then I say that precinct comes under the Sunfield condition, and under the McCall-Kirby case, because I can not see the difference in designating a person an instructor improperly and illegally and letting some one do it without being an instructor. It is in exactly the same class as in the case at Charlotte. If there is a single precinct, if you please, where Mr. Fellows agrees to apply the law, to throw out the precincts because a woman handled a ballot, because she was not legally there, then you must necessarily go over to the third ward of Charlotte and say to Mr. Nichols, "Your ward goes out;" and, as a matter of mathematics, gentlemen, we are frank to tell you that just as soon as you would do that, applying the rule to the two precincts, and apply identically the same rule, to identically the same conditions, in the same ward of Charlotte, we gain, however, 47 votes plus 39, making 86 votes, in the third ward of Charlotte, which would make a difference of 98.

I am frank to say that we are here fairly and we are here squarely. We are people who think we know what we are standing on, and we know how to get licked and we know how to win. We want to apply exactly the same rules throughout and follow the legal procedure and apply the laws that the House has stamped as proper. Following the procedure which the House has said is proper, if we are entitled to the seat, give it to us; if we are not entitled to the seat do not give it to us, and it does not make a particle of difference whether the man is John M. C. Smith or Claude Carney, we are not here talking against Smith; we are talking nothing but what we actually believe is a legal right. We either have this seat or we have not got it; and in doing that we expect you to be just as hard-hearted and just as hard-headed as you choose.

I will read from the record from page 488, Mr. Chase's testimony [reading]:

"Q. How many were engaged as inspectors of the election?—A. I am not positive, but I think eight. There were two door tenders or gatekeepers, but I couldn't say exactly; I think eight.

"Q. In all?—A. Yes, sir.

"Q. What part did you take?—A. I received the ballots.

"Q. Did anyone initial the ballots?—A. Yes, sir.

"Q. All of them?—A. Yes, sir.

"Q. What was the railing surrounding that booth?—A. The railing that surrounded the booths?

"Q. Yes: what was it?—A. There was no railing at all. The booths had doors. We were in a separate room from where the booths were.

"Q. You were in the room where they were initialing?—A. No, sir; a separate room.

"Q. Could you see the booths from where you were?—A. Not without getting up from my chair. Some of us could. The man that gave the ballots out could, but the rest of them could not without getting up off their chairs.

"Q. How did they see them, through the door?—A. Through the window—practically a door—a half window.

"Q. When you gave the ballots to the voter where did he go?—A. I didn't give the ballots to the voter. The man who did he went in the booth and came out and delivered it to me.

"Q. By whom was the ballots delivered to the voters?—A. I think W. E. Geary.

"Q. Did anyone else receive ballots there that day?—A. Only during meal hours.

"Q. Who did?—A. I couldn't say. We all took turns at the box.

"Q. The whole eight of you?—A. Yes, sir."

Mr. SHIELDS. The only time—

Mr. SMITH. Read a little further.

Mr. SHIELDS. I am going to. I have lots of it to read.

The only time anybody except an honestly qualified inspector took a ballot was during the meal hour when one inspector was away, and this man swears during this time the whole eight of them took a chance at it, and yet in the eight were two gatekeepers who could not leave their place of duty to get into the box.

Now, gentlemen, figure it out. If you think there were eight inspectors there, if there is any way you can figure it, here are the facts; apply the cases.

The CHAIRMAN. What did the other witnesses say in regard to that?

Mr. SHIELDS. I have them here and will read it before I get through [reading]:

"Q. Was there anybody in that booth that day aside from the inspectors?—A. Well, yes; the city clerk was in there, and the city attorney was in there two or three different times.

"Mr. ADAMS. I object to that as incompetent, irrelevant, and immaterial, there being no allegation of that kind in the contestee's answer that would warrant the introduction of any such testimony under the issue."

He talks of booths sometimes here and he talks of precincts, and this was a city booth out in the street, in which there was a rear door and front door, and the booths were in the inside. Sometimes that is designated or spoken of as "voter"—the whole thing is a voting booth. Inside are individual booths.

So, when you come to determine whether anybody was improperly in there, you must determine from the language of the witness whether he is using the general term, speaking of the metal building or inside where he is voting.

Mr. FREAR. Is there anything in your statute which requires the polling booth to be in the same room where the officers are?

Mr. SHIELDS. None that I know of.

Mr. FREAR. You spoke of the window they looked through:

Mr. CARNEY. This is described; he calls it a "half window." As a matter of fact it is a half window instead of a half door. It is described later on in particular. It was a railing, only it would swing around and open, and they could see everywhere.

Mr. SHIELDS. That is very evident from the following sentence.

Mr. SMITH. It says that no ballots shall be distributed except in the voting place.

Mr. CARNEY. Only this railing was made permanent, for the purpose of the election.

"A. (Continuing.) There were several there. I couldn't say just who they were now, but different ones came into the back door. There is a front and a rear door to this precinct. I couldn't say now, but several different ones looking after their candidates there, who had voted and who had not.

"Q. There was nothing to hinder their coming right in?—A. No, sir; the doors were not locked.

"Q. Do you know of anybody aside from the inspectors who handled ballots?—A. No, sir; I do not; not at that election."

The same man—and this shows how interesting he gets—over on page 490, the query is to try to have him identify somebody who had been solicited. He was asked if they were black or white, and he replied that he could not say.

Mr. CARNEY. That was with respect to being solicited, not instructed.

Mr. SHIELDS. Now, going over to page 489 [reading]:

"Q. During the day?—A. Not at that election.

"Q. Do you know a woman named Miss Marsh?—A. Yes, sir.

"Q. Was not she present and didn't she hand out ballots?—A. I may be mistaken, but it seems to me she was there in the spring but not in the fall—she was there in the fall, I think.

"Q. At the November election?—A. Yes, sir; that is when she was there, and also Mrs. Oldfield."

His testimony is already given that no ballot was handed out except by an inspector. Now he is asked—

The CHAIRMAN. This fellow said they had been drinking on election day.

Mr. SHIELDS. I will cover that and let a witness speak of it.

Mr. FELLOWS. If I may interrupt you—

Mr. SHIELDS. Surely, you may do that at any time, Mr. Fellows.

Mr. FELLOWS. The question Judge Frear asked with reference to the room, the language of the statute 163 in the paragraph in this pamphlet would indicate that the booth must be in the room where the ballot is delivered. This is the language [reading]: "On entering the room the inspector having charge of the ballots shall deliver to him one of them, and the clerk shall enter his name upon the poll list, together with the number of the ballot given him and on request such inspector shall give explanation of the manner of voting; if deemed necessary by the board an interpreter may be called. The elector shall then and without leaving the room, go alone into the booth, which is unoccupied, and indicate the candidate or candidates for whom he desires to vote, as follows:"

And then it says how he shall vote, indicating that the ballots shall be distributed in the same room that the booth is in.

Mr. FREAR. Is there any contention between the parties here as to whether this was the same room?

Mr. FELLOWS. There is no contention but what it was the same room.

Mr. SHIELDS. It was substantially the same room, connected by a half door.

Mr. CARNEY. It is a partition, but they called it a door—a swinging partition.

Mr. SHIELDS (reading):

"Q. They were handing out ballots to the voters in that precinct, were they not?

"Mr. ADAMS. I object to that as leading.

"A. I think—I am not positive—I think that Miss Marsh and Mrs. Oldfield did old ballots two or three different times and did hand them out for Mr. Geary.

"Q. Was he an inspector?—A. He was the man that gave out the ballots; yes, sir.

"Q. You say that you finished counting along about 2 o'clock in the morning?—A. About that time; yes, sir."

Now, just go to the other page. He has expressly stated that he did not know of anybody aside from the inspectors who handled ballots. That is a question of fact for you to measure.

Let us go over to page 491, the same gentleman still furnishing the information concerning this election [reading]:

"Q. You said there were eight inspectors?—A. Eight altogether, with the gatekeepers or doorkeepers."

He is calling every official an inspector [resuming reading]:

"Q. How many inspectors did you have?—A. I think six in the room.

"Q. You don't mean they were all inspectors, do you?—A. No, sir; clerks, some of them; I will not say whether three or four; I don't know.

"Q. Three or four inspectors?—A. Yes, sir; I don't know."

From my friend's reading of the record you would think there were inspectors sworn there, all handing out ballots. That is the same man. Was he telling the truth now or was he then, and this is the only question of fact upon which you can say there was anything irregular there.

I am going to take the liberty of reading—

Mr. CARNEY. What did Mr. Bush testify?

Mr. SHIELDS. Bush swore they were not drunk but not sober.

A few sentences further, now, they claim that the precinct should be thrown out because there were eight inspectors. I have just read the testimony. If you find from those facts that they come within any of the election laws of Michigan or any of the supreme court decisions, apply them. We are not going to quarrel with it. That is fair. I am going to be just as fair as they are. I can use the knife just as rapidly as they can [reading]:

"Q. The rest were clerks and gatekeepers?—A. There were eight employed, I think."

I call particular attention to that because this is the only man who injects Mrs. Oldfield into the handling of ballots or doing anything [reading]:

"Q. You stated that Miss Marsh was there and Mrs. Oldfield?—A. I didn't say Miss Marsh; it was either in the spring election or fall; I don't remember which.

"Q. You are not sure about that?—A. No, sir.

"Q. You are not sure that either of those ladies were there at the November 5, 1912, election?—A. No, sir; I don't know that; I may be mixed up in the spring; I worked there several times; I don't remember."

And that is the testimony upon which you are asked to throw out the district, because of Mrs. Oldfield being there.

Mr. FELLOWS. Did not Miss Marsh testify that Mrs. Oldfield took her place on the day of this particular election?

Mr. SHIELDS. I will read just exactly what she testified there. We will get them just as they are. I have Miss Marsh's testimony, gentlemen, and I will read it now, so that you will not be mixed up about it. This record is practically impossible for anyone who did not go through with it, I am sure.

On page 184 Miss Marsh testified [reading]:

"Q. Do you know Mr. Chase, quite a large man?—A. He was the one that put the ballots into the receptacle. I suppose that was Mr. Chase; I didn't know him at the time.

"Q. What did you do, if anything, with any of the ballots at any time while you were there that day?—A. I never touched them.

"Q. You didn't touch a ballot?—A. No, sir.

"Q. Didn't handle them at all?—A. No, sir.

"Q. Or have anything to do with them or handle them?—A. No, sir.

"Q. Was there another lady there during the afternoon?—A. No, sir."

I should read in that connection, as I recall, in another place she said that Mrs. Oldfield did come to take her place, but she does not state when; and then goes on afterwards and states that she herself was there during the afternoon. I do not know what that refers to, unless it is the noon recess. There is the woman he said handled ballots, but says point blank she did not. Why did she say that? Let us look at this just a second.

Again, on page 185, in answer to a question, she says [reading]:

"Q. Was there anyone else in there besides the man who delivered the ballots?—A. I don't know their names.

"Q. They were in there?—A. Yes, sir; four or five.

"Q. All the forenoon?—A. Yes, sir.

"Q. And in addition to those four or five, did you see a man that was receiving ballots and depositing them in the ballot box?—A. Yes, sir."

A little lower on the page it reads [reading]:

"Redirect examination by Mr. ADAMS:

"Q. You didn't say anything to any voter about voting?—A. No, sir; certainly; nothing.

"Q. What, if anything, did you say to any voter during any time you were there that day?—A. I didn't say anything to any voter.

"Q. You were simply there so they might see that a woman was there?—A. Yes, sir.

"Q. That was the object of your being there?—A. Yes, sir.

"Q. Did you participate at all in the work of the board there—the inspection board—that day?—A. No, sir; I did not. I went away shortly after noon and didn't return.

"Q. You were simply there to look on?—A. Yes, sir."

I want to call your attention to what a witness says in regard to this Chase's testimony, upon whose statements this entire claim is based about this precinct. This is in the testimony of Bush. I am reading from the bottom of page 513, and carry it over to the next page [reading]:

"Q. You say that she did not in any way tamper with the ballots, or mark them, or say anything to the voters, do you?—A. She was a perfect lady; she didn't say anything or tamper with them or say anything to the voters.

"Q. She was a teacher in one of the schools, in the normal school?—A. Her occupation I am not aware of.

"Q. Was James Chase a member of that board that day?—A. Yes, sir; he received the ballots.

"Q. What shape was he in that day?—A. Well, for my part, I was glad the ladies were there.

"Q. What was his condition?—A. He didn't look just right to me; he was pretty windy anyhow.

"Q. Did he appear to be in any way intoxicated?—A. I should say he was not exactly sober."

Mr. FREAR. Whose testimony is that?

Mr. SHIELDS. That is Mr. Bush's testimony in reference to friend Chase.

Mr. FELLOWS. We have a statute that prohibits having intoxicating liquors at the polling place. I do not know whether that applies where it is inside.

Mr. FREAR. That is a question which applies.

Mr. SHIELDS. Do you mean having the whisky inside of the man or inside of the polling places? I think there are times at elections where men will get a drink. I do not know where they get it from.

On page 206, in regard to Geary [reading]:

"Direct examination by Mr. ADAMS:

"Q. Mr. Geary, you live in the city?—A. Yes, sir.

"Q. A business man here?—A. Yes, sir.

"Q. How long have you lived in the city?—A. Thirty years.

"Q. Did you act on the election board in the city of Kalamazoo on the 5th day of November, 1912, at the general election?—A. Yes, sir.

"Q. What board?—A. In the seventh precinct, as inspector.

"Q. I notice here in Exhibit '96' which I show you, this second certificate there or oath seems to be signed by W. E. Geary, oath of inspector of election; is that your signature?—A. Yes, sir.

"Q. The jurat is signed by Benjamin O. Bush?—A. Yes, sir.

"Did Benjamin O. Bush administer the oath to you that day?—A. Yes, sir.

"Q. Now, did you know, on November 5, 1912, a lady named Harriet Marsh?—A. Yes, sir.

"Q. Was she there that day?—A. Yes, sir.

"Q. While that election was being conducted, or any part of the day?—A. Yes, sir; part of the time.

"Q. I understand that she claims she was there in the forenoon of that day; what did she do there that day?—A. She sat inside, about 3 feet from the table that contained the ballots.

"Q. Did she handle or have anything to do that day with any of the ballots that were used at that election while you were there?—A. No, sir."

There is the testimony, and the only testimony as to whether they handled the ballots or not. I do not desire to question the petition or the amendments allowed here, because as I understand counsel now all amendments that have been put in, which arose in the original petition and as presented by Mr. Smith in his answer—this particular situation was not as regards Mrs. Oldfield, was not called to anyone's attention. No testimony was given about it.

Miss Marsh, whom they said had handed out ballots, was brought in and denied it. Mrs. Oldfield did not happen to be produced as a witness. Apparently everybody abandoned it, and in their brief they made no mention whatever of Mrs. Oldfield or anyone or anything that would tend to let us know any reliance is to be placed on that bit of hearsay testimony.

What they did cover in their brief, on page 31, under the heading of seventh precinct, city of Kalamazoo, Kalamazoo County, is as follows: I am not questioning it, gentlemen. We are here to take things as they come up, but I am just saying to you that you can not base any finding upon Mrs. Oldfield not being sworn or any testimony that would leave any reasonable ground to believe Mrs. Oldfield had anything to do with that matter. It is something that came up to-day; for the first time has come to our notice.

I have described the voting place and the booth inside [reading]:

That is the only proposition that was advanced in regard to Miss Marsh for that precinct. I say that in fairness. If you find in this testimony the facts that warrant the belief that Mrs. Oldfield had anything to do there it is within your province to apply the law, but I have analyzed all that testimony and hearsay statements that Mrs. Oldfield was there. The only one that they claimed in the brief had handled ballots was called to the witness stand, and you have got that proof before you. Gentlemen, is any reasonable man going to say that under the law that precinct should be thrown out because of Mrs. Oldfield's presence? If you do, that is your privilege.

Mr. FREAR. I do not remember that case in the supreme court decisions. Does it refer to the handling of ballots by those people who were in there?

Mr. SHIELDS. Specifically.

Mr. CARNEY. That is the ground it is based upon.

Mr. FELLOWS. The opportunity was there.

Mr. SHIELDS. The opportunity was there, because they were handling the ballots. That is the decision set out in the brief. These gentlemen are getting weary and so am I. I want to get back to Michigan as quickly as I can get there.

I am not going to take any more time. We have tried to come down here and tried to present this matter fairly. We have presented all the facts. You have been very kind to both of us in digging in and trying to get out of this record what was in it. We have presented to you the theory, we have presented to you the authorities, and we realize that the power is in your hands.

I am quite sure that you will not pay any attention to any statements made by us which are not borne out by the record. I am equally positive that you will not be biased by any statements of the contestee nor any statements made by him not borne out by the record. We have presented a theory to you; we have presented these specific precincts to you that we rely upon, and we have had the pleasure, no matter how this contest may come out, of having our illustrious attorney general of Michigan stand before you and say we were right, and apply it to some other districts that might take votes away from Mr. Carney. We are right on the law; he has conceded it to you. It is up to this committee to find from the record, if they can, other precincts that should be thrown out. I say to you that we would be very glad to have you look into it carefully as to precincts mentioned; if you apply the law there as they ask you to, apply our law; then you have got to go over without any question outside of that the supreme court passed on and take the third ward of Charlotte and throw that out. When you do that, you have merely increased Mr. Carney's standing. The figures will show that.

I personally wish to thank you from the bottom of my heart for the extreme kindness extended, and I hope if you ever come up in Michigan you Republicans will throw your politics aside and you Democrats will retain yours and come around and see us. We will be glad to show you that Michigan extends to you the same courtesies and kindnesses that you have extended to us.

Mr. CARNEY. There are two or three things, Mr. Chairman, if you please, I would like to suggest to you, in as much as some of these matters that Mr. Fellows now raises have come up at such a very late hour. I take it that probably he has abandoned everything in this newly born amendment excepting the things he is arguing. I do not know that that is correct. Do you wish to contend for anything you have not argued here, Mr. Fellows?

Mr. FELLOWS. Mr. Smith has made a statement in the record which shows all points these amendments apply to.

Mr. CARNEY. I will spend no time at all telling how nice you have been to us and how glad we are to be here, which is usual at such a time, because I know you are tired and that you will appreciate brevity.

There are several things which have been sprung on us after the testimony was all in and after the record was printed, or after the briefs were in and after the arguments were commenced, and sprung on us after our opening arguments were concluded and after their opening argument was half finished. Necessarily any court—of course you sit here as a court—ought to scrutinize such a turn of matters very closely, and the difficulty, of course, now for us is to pick out the facts from a very voluminous record and apply it. You will notice in this proposition Mr. Smith's statement. In fact, the amendment is not any amendment at all, according to the practice of pleadings. It gives us no notice; it is a blank proposition, pure and simple, and gives us no more notice than the record itself.

So we are but little better off. But Mr. Smith made a statement on the record that certain of these precincts in Kalamazoo County, numbering them second, third, fourth, seventh, ninth, tenth, twelfth, and fourteenth—they raised the question that the officers of that election were not sworn, as shown by the tally sheets. Now, I challenge your attention to this fact, as has appeared here in the statute. The tally sheets and the form books are simply furnished without authority of law. There is no prescribed form. There is nothing in the statute that prescribes whether the oath shall be recorded or not. It simply shows that a man that acts as officer of election must take the oath to do his duty. In every instance where there is an oath lacking in Kalamazoo County we supplied the proof upon that proposition, although we had no notice that the question would be raised, and, in fact, that we found all through these very books that you have here, throughout Eaton County, in various instances it turned out that one oath would be lacking or another, but sometimes we had the information and sometimes it came out in the evidence that the oath was actually given. So we raised no question on it, and we supplied that proof by the testimony of the different people who administered the oaths. I think the testimony shows that the city clerk went around the morning before election, where the different precincts were, and administered the

oaths to nearly all of the people who were to act upon the boards. So that question is taken care of.

We will have to concede to our distinguished attorney general a very clever and brilliant argument, by means of which he brings into this case all the irregularities and argues them all from the same standpoint. We had already discovered in this case that when he came to analyze certain cases he found that certain different rules applied, so that when he came to analyze the argument he has made here to-day and compare it with his printed brief, when he says that it will affect 400 votes, we find that the large majority of those running through the different precincts are those that were affected by the different inspectors instructing the voter within the booth. We are agreed upon that, notwithstanding the fact that he has argued those all as one proposition. We are agreed as a matter of law, or by quotations taken from both briefs and by quotations here orally, that where there is no fraud shown that particular vote should be case out and not counted for anyone, and that the result should be found by deducting those votes proportionately. That is one of the things we are agreed upon in this case, so that phase of the violations of the election laws of Michigan which we have all conceded is not one of the things that makes void a whole precinct; and you will find in analyzing this proposition that there are certain rules of law which go to the very heart of our election laws and certain other rules which violate certain ballots and certain others that are of course merely directory, and it is only by mixing all of these rules up in one basket, as it were, and shooting them at you gentlemen that he arrives at the result that there are about four hundred, or at least enough votes thus affected, if you throw out all the precincts where there is any irregularity at all, by which they overcome those irregularities upon which our supreme court has spoken finally.

I want to call your attention to the fact, gentlemen: You will find running through those statutes that our court has held mandatory a certain peculiar proposition that affects the three particular precincts that we have called your attention to so specifically. Sometimes the courts have held statutes mandatory that read something like this: "Certain officers shall do so and so"; and oftentimes they hold that language to be directory only, depending upon the character of the work to be performed and upon the plain intent of the whole statute, read as a whole. In other words, where the statute says that certain things shall be done by an officer it describes his duty, and sometimes they hold that that is directory only, and it might be done by a de facto officer, for instance, but I yet have failed to find a case where a statute has been enacted which reads that a certain duty shall be performed by a certain officer, and in addition to that states that this duty shall not be performed by any other person, but that there is a unanimous line of opinions in our court and every court, which provides that that class of statute shall be held as mandatory statutes.

I think I have made that point clear. In that connection, I want to call your attention to the three statutes that we rely upon in Sunfield.

The CHAIRMAN. Has there been anything about those three Sunfield precincts presented?

Mr. CARNEY. Yes; and the three statutes apply to Sunfield, Carmel, and Windsor.

So far as Sunfield is concerned, in the first place, the duties of election officers are generally as outlined.

Those are the three prohibitory statutes, and I want to call your attention first to the statute as it applies to Sunfield. This does not stand upon any discretionary statute or discretionary power. There are statutes, of course, which go ahead and outline the general duties of all the different officers. After having done that, then the Legislature of Michigan picks out the inspector who hands the ballot out to the coming voter and says this to him: "No ballot shall be distributed by any person other than one of the inspectors of elections." So that that comes back to the proposition that I started out with. This is one of those statutes where the law says a certain thing shall be done by a certain officer, to wit, an inspector.

He goes further than that and says that his particular duty shall not be performed by any other officer. How are you going to assume that statute does not mean just what it says?

The same thing is true with reference to the township of Carmel. After providing that the board shall provide suitable ballot boxes, without any particular further description, excepting that it has a lock and key, then, bearing upon the meat of all this, bearing upon one of the essential things of our election, to wit, the secrecy of the election, they say this: "The said box shall not be opened during the election, except as provided by law in cases of adjournment."

That is the noon adjournment that we have already gone through with. In reference to the township of Windsor, of course, we have thrashed that out time and again. The statute there expressly provides that any ballot that goes in the ballot box that

does not contain the initial of the inspector appointed to initial them shall be void and shall not be counted. So that upon those three propositions there remain in our courts, or in any court that is construing these three statutes, no power to say that these are directory only. That is the point I make.

Now, then, so far as the persons who are directed to place the ballots in the box are concerned, the statute is a little different from that which provides for the person who is to hand out the ballot. It provides that an inspector shall put them in the box. It does not say that no other person shall; and that, of course, becomes a matter for the court to determine just what that section means, whether directory or mandatory, and the question, so far as I know, has not been determined; but there is another section, if you please, which goes a little bit further than that. It does not say that it shall not be done by any other person, but there is one person that the statute says shall not put ballot in the ballot box, and that is any person who has put his name upon the ticket as a candidate for office; and that is why there seems to remain no discretion for this court, or any other, to say that any ballot placed in the ballot box by John Nichols could possibly be counted for anyone, because it is contrary to an expressed prohibition, as in the other cases, do you not see?

Of course, the object of that statute, and that particular one, it seems to me, when our courts get to it, will hold to be a mandatory provision; that is, I believe, they will say that is the first statute that means that nobody but an inspector can stand there and put ballots in the box, because there again is the real heart of your election law. For instance, the law says that if an inspector does or does not do certain things he is guilty of a crime. Somebody else performs that function, and he does not obey that law, and he comes in and says, "I was not an inspector of an election. I was simply an interloper. That statute does not apply to me."

And, again, gentlemen, it is not necessarily a question of time or number of ballots so much as it is the opportunity. Here is a man in charge of a ballot box, and, notwithstanding my friend's argument, I think you will find that the evidence shows that he was in charge of the ballot box alone, and in a room separated from the other room entirely by the booths. The evidence shows that the Democratic challenger came in there and found him putting ballots in the ballot box, and he did not know when he started. The point I make is that it opens a very wide door. What our courts will say about it I do not know, but when they find that this man comes within the prohibited laws, he is one of the persons interested in the election, his name is upon the ballot, and the statute says he shall not place ballots in the ballot box, I believe our court will say, and this court will construe that statute fairly, that that means that the legislature intended that that should be a mandatory provision.

There has been something said, and I think, inasmuch as the statement has been so repeatedly placed upon this record—not that it changes the law of this case one iota, but lest we get a misapprehension of the facts, and thus perhaps use discretion we would not otherwise—I wish to now challenge your attention to the true political description of that board in Sunfield.

Mr. Fellows, our honored attorney general, took some exception to my questioning his statement that three of that board were Democrats and one Bull Mooser, and there was not a Republican on the board. I do not question his good faith, but much as we admire his ability as a lawyer we sometimes get the facts wrong, and he need not have been impatient about it, because I know we often find ourselves wrong, and as a matter of fact all of the statements about this board being in the control of the Democrats is something that has grown in the brain of my brothers without getting the facts from the record. I will give them to you exactly as they are.

Mr. Palmer, the supervisor, was a Democrat. As far as we are agreed I will not refer to the record. Mr. Bacon, who died before this case was commenced, was also a Democrat. Mr. Hager, who my brother says was a Democrat, testified, page 220 of your record, Mr. Smith, top of the page:

"Q. You were a Republican at that time?—A. I always have been.

"Q. You were on that day, election day, a Republican?—A. Yes, sir.

"Q. You say that Mr. Bacon administered the oaths to the other members of the election board on that day and the gatekeepers?—A. Yes, sir."

So, you see, Mr. Hager was a Republican, and Mr. Mapes was elected by the Republicans upon a Republican ticket, and I think it will be wise for me here to call attention to the fact, if you get to reading this proposition, if it has any interest at all—and it seems they must claim it has, because it has been repeated upon this record ten times, by actual count—you will find he is the son-in-law of Joel Bera. You will say, "Who is Joel Bera?" And I will tell you in just a minute. Some one said Mapes was a Bull Mooser. Now, Mapes did not swear to any such thing. He was elected upon a Republican ticket; he was not a Democrat and never had been. Some one

heard he had changed to a Bull Mooser. Hager always was and was then, on election day, a Republican. So the board was split in two in the middle.

Mr. Knapp, who came as the regular clerk in the first place, was a Republican. That, I believe, is not questioned; and Mr. Witherall had been a Democrat, but on page 93 it shows that he had abandoned the Democratic Party, but was enrolled as a Republican at that time.

Mr. FELLOWS. Right in that connection. Did not Witherall testify that the changing of the enrollment did not change his politics?

Mr. SHIELDS. (Reading:)

"Q. How did you enroll?—A. I enrolled as a G. O. P.

"You mean as a Republican?—A. Yes, sir.

"Q. Were you enrolled as a Republican prior to the time you acted on that election board—November 5, 1912?—A. Yes, sir.

"Q. So when you acted on that board, November 5, 1912, you were enrolled as a Republican?—A. I was enrolled as a Republican.

"You say you were enrolled as a Republican?—A. Yes, sir.

"Q. Do you mean you were enrolled as a Republican and a Democratic voter?

"(Objection.)

"Q. What I am getting at is whether you actually changed your politics or not by the change of enrollment?—A. I have not changed my politics."

I am referring to page 93 of the record.

Mr. FELLOWS. He was a member of the Democratic county committee of the township.

Mr. CARNEY. He had been, and said he had been dropped. He said so in the record. Anyway, he was one of those fellows who is one thing one day and another thing the next. We all see that in every community. At any rate, he was not a member of the board. He came in later and did not take any oath or anything else, and sat down and began tallying.

So that you see that you now have the true complexion of that board. My brother says that that shows he was a Democrat. I say to you, I do not care whether he was a Democrat or a Republican or a Bull Mooser or a Socialist or what his politics, he had no power nor right to give any legal effect to any ballots passed out. It was absolutely contrary to the laws of the State of Michigan. Is it not remarkable this man comes the distance that he did to appear as a witness in behalf of the contestee, but he had charge of that election in that Republican precinct, full knowledge of the board, half of which was Republican, anyway, but did not even take the precaution to place the challenger to watch him or to watch the election or anything else, and then he is eager to spread upon this record an answer to a question that no power on earth can dispute him upon? He swears that he voted a straight Democratic ticket, in violation of the secrecy of the ballot. Instructed that it was an improper question and that he did not have to answer, he volunteered to answer in order to get it upon this record for the benefit of the contestee, and I say I am justified in challenging this committee's attention to all that took place in the township of Sunfield and to the testimony of Mr. Sayre.

So that it simply reduces itself to this. I care not what is claimed about politics. We are all alike citizens before the law and entitled alike to its consideration, but men who claim one day to be Republican, and Bull Mooser or Democrat the next, or whatever their claim, I do not contend that because a man is a Democrat he is necessarily honest or that because he is a Republican he is necessarily dishonest, either, in Michigan, but we are protected against those things that the law throws out to protect us against the evil within our own as well as within the other party, and there can be no such answer as this to a prohibitory statute such as I read to this committee.

There are a lot of questions that have not been touched upon at all. There is one thing, I think, in justice to myself and justice to the committee I should call attention to. I know you are awfully tired. You have listened to this argument for 10 or 12 hours and you ought to be tired if you are not. You have us beat if you are not.

My brothers say they ask the same thing in Battle Creek as I received in Climax. They are asking the same treatment. They are not asking the same treatment, gentlemen, and I want to call this committee's attention now to the fact that every conceivable question up to the present hour by every Republican canvassing board in the third district and by every board of inspectors has been determined in favor of the contestee, in order to enable him to receive the certificate of election in the first instance.

Let me see what they are. In the first place, he knew when he received that certificate that the vote in the township of Climax—or ought to have known it—was

not correct, and yet he took the advantage of it; and the like situation existed in the city of Battle Creek. Gentlemen, I realize I am a stranger to you, coming here and questioning the right of one of your fellows. But apply the same rules to both of us and forget your partisanship and your acquaintance at the same time and look at the situation that I confronted down there. I went first to Eaton, as the evidence shows, to the board of Eaton County, to demand a simple legal right as provided by the statute. I think I should call attention—

Mr. FELLOWS. What was the politics of the Eaton County board?

Mr. CARNEY. I will tell you what it was, as I understand it. I may be mistaken. Sometimes we forget these little things. Mr. Brown, the chairman, and Mr. Nichols we have heard described, were Republicans. Mr. Little's politics you say was that of a Democrat. I was thinking he was a Bull Mooser. The other gentleman was a Democrat, chosen by the Republican chairman to fill a vacancy. That was the complexion of the board, if that has anything to do with it.

What I am getting at is the treatment that the contestant received there. Page 345 of the record shows the request that I made there, and I will show you how modest it was. Fortunately I had it reduced to writing. I will read that portion of it with which I had to do. (Reading:) " * * * November 13, Claude S. Carney, Democratic candidate for Congress from the third congressional district, personally appeared before the board and requested the board to summon the inspectors of election of the township of Sunfield for the purpose of correcting and completing their returns for said township. * * *"

Mr. FELLOWS. If you will pardon me right in that connection—and I am reading from page 63 [reading]:

"Q. To what party did Mr. Brown belong?—A. He is a Republican, I think.

"Q. To what party does Little belong?—A. I couldn't answer that question.

"Q. You are a Democrat?—A. Yes, sir; supposed to be.

"Q. Isn't it your recollection that Little is a Democrat?—A. I have been told he was.

"Mr. ADAMS. I move that answer be stricken out as hearsay.

"Q. Your understanding was that it was a Democratic board?

"Mr. ADAMS. I object to what he understood as incompetent, irrelevant, and immaterial.

"Q. Answer the question.—A. I have been told it was Democratic.

"Q. Was it not your understanding that Mr. Little was a Democrat? Is there any question in your mind about his being a Democrat?—A. No, sir; I don't know as there is.

"Q. There is no question in your mind about your being a Democrat?—A. No, sir.

"Q. There is no question in your mind about the board being Democratic?—A. Supposed to be."

That was the Eaton County board.

Mr. SHIELDS. Is that the evidence upon which you based your case as to their politics?

Mr. FELLOWS. I am willing to take the statement of the member of the board. I apprehend the members of this committee know what the politics of their fellow members are.

Mr. CARNEY. (Reading:)

"basing his motion upon the affidavit of Rosslyn L. Sowers, attached to the protest of Sam Robinson, claiming that said returns should be corrected to read 'November 6th' instead of 'November 5th,' and claiming that said returns should show an adjournment was made, if such was a fact; and a like motion with reference to summon the board from Carmel for the purpose of showing whether a part of the count was made before the hour of 5 o'clock and while the voting was in progress in such township. This last motion is based on the affidavit of N. W. Spencer, which is attached to the protest of Mr. Robinson in relation to counting the votes of said township."

That was the request. In other words, that their return should be corrected to agree with the facts. Their return from Carmel showed, as the record shows, that they made their count immediately after the closing of the polls which the affidavit showed was untrue, and which we now know was untrue.

The Sunfield proposition was the same. It showed the return was made on the 5th of November, and I showed by them there was a very serious question of an adjournment over there. Everybody was, of course, a bit indefinite and vague as to the law—I am quoting from the Supreme Court decisions, and it seems still in doubt—an adjournment according to a later decision may or may not vitiate the vote, according to whether opportunity existed for fraud. That is the latest decision. Anyhow, that is the situation and illustrates the treatment I received there.

I want you to listen to the reason they gave for not calling in the voters from Carmel Township, recommended by this eminent lawyer, John C. Nichols. That is the fair play I got down there. You lawyers will appreciate this.

Mr. STEPHENS. What is the page?

Mr. SHIELDS. This is page 462. (Reading:)

"Q. You raised the question before the board whether Mr. Spencer was qualified to make the affidavit setting forth the facts as claimed in his affidavit in reference to the township of Carmel while he was a resident and voter in the city of Charlotte?—A. Yes, sir; we did.

"Q. That is, you took the position because Mr. Spencer was a resident and voter in the city of Charlotte, that he had no right to make an affidavit of what occurred in the township of Carmel?—A. Yes, sir.

"Q. And that was the reason why you took the position that there wasn't anything in reference to the affidavit of Mr. Spencer and the township of Carmel that justified you in calling the election board of Carmel down?—A. Well, now, you have a pretty long rigmarole; I don't know what you want.

"Q. That was the reason you gave while your board was in session?—A. Not by me."

Mr. STEPHENS. That is on page 362. I thought you said 462?

Mr. CARNEY. I should have said 362. I thank you. (Resuming reading:)

"Q. Was not that the reason given by some members of the board? Didn't you take the position there, while Mr. Carney was there, that because Mr. Spencer had made that affidavit with reference to Carmel Township that there was nothing before the board, as far as Mr. Spencer's affidavit was concerned, that justified the board of county canvassers in calling in the election board of Carmel Township?—A. Yes, sir.

"Q. You took that position because Mr. Spencer was not a resident of Carmel Township?—A. Yes, sir.

"Q. You didn't consider, then, that any man who knew the facts, whether he lived in Carmel Township or whether he lived somewhere else, if he claimed to know what he was testifying about, was a competent man to furnish your board any evidence as to what that board in Carmel Township did at the November 5, 1912, election?—A. Yes, sir.

"Q. Well, then, I understood you to say that the fact that Mr. Spencer, who was not a resident of Carmel Township, made that affidavit was the reason why you did not consider there was any evidence there before your board to act upon. Is that true?—A. I don't think I said that.

"Q. Was not that the fact?—A. That was one reason for it.

"Q. That was the reason you gave to Mr. Carney, was it not?—A. Well, the board—that was the decision of the board; I was not the whole works.

"Q. Your board did decide it upon that ground, that because Mr. Spencer made that affidavit, although he recited in it what the facts were, because he was a resident of Charlotte and was not a resident or voter in the township of Carmel Township when the election of November 5 was held, therefore your board was not justified in calling in the election board of Carmel Township before the board of county canvassers?—A. Yes, sir.

"Q. You and Mr. Nichols did talk in regard to that matter while Mr. Carney was there, didn't you, in regard to calling in that board from Carmel Township?—A. I may have been; perhaps I did.

"Q. You were the only ones, besides what Mr. Carney said there, to say anything on that subject until Mr. McPeck came in?—A. Well, we were the only ones that time."

McPeck was the prosecuting attorney and the chairman of the Republican Party.

Just a word further about this interview [reading]:

"Q. Now, Judge Adams in his cross-examination desired you to state just what occurred; I wish you would state what Mr. Carney did say when he said to Mr. Nichols 'Who are you?'—A. Mr. Nichols sat in the window, and I think I said Mr. Carney was doing this talking, and Mr. Nichols said, 'I will have to take issue with you,' and he wanted to know what right he had to butt in, and Mr. Nichols said, 'I am the county clerk of Eaton County, and we will not allow any man from Kalamazoo to come here and dictate to us how business shall be done in Eaton County.' 'I beg pardon,' he says; 'I am glad to know you are the county clerk; I beg your pardon.'

"Q. Did Mr. Carney tell him he had no voice and no vote?—A. No, sir."

I call attention to this as bearing upon the proposition that I started out with, that every conceivable question was determined against the minority candidate for the purpose—I think the evidence fairly shows—of having the election certificate, in the first instance, issued to the contestee. In other words, I asked for a perfectly natural, normal right, which upon the face of the returns would have given me the opportunity, I thought, possibly, without going into the matter further or raising this question as to the election in Eaton County, in Carmel Township, by mandamus in our local court. Whatever my purpose anyway, I was entitled to a true certificate from the officers of the election as to the fact.

Our canvassing board had the power to call in officers to correct their certificates to their returns; they did not say they did not have the power, but they said to me:

"Because the evidence you present comes from a man who don't live in Carmel; true he says he showed all this; true he was there, as the testimony shows here; true he was an eyewitness, but we won't take his evidence on something that happened in Carmel, because he lives in Charlotte."

That was the only reason they could give me, and they handed me then the next proposition from John Nichols acting, a county clerk, the same man who was down placing ballots in the ballot box in the second ward, who testified he was an attorney at law and knew he was violating the law, making that remark to me and Mr. McPeck, and my brothers will now say that he had no interest in the election of John C. Smith.

Two days later this man who made this statement went to Sunfield and procured this affidavit that so much has been said about, and left one for Mr. Knapp to sign, which my brothers deny very emphatically, not bringing it forth very readily. If you will examine the testimony—I have not the time to do it—you will find two good reasons why that affidavit was not produced until the pressure was brought to bear. In the first place, the affidavit itself shows that these men, to say the least, in the hands of John Nichols did not state the situation fairly. An affidavit was attempted to be procured from John Palmer, and he failed to come across with it, and then these affidavits none of them showed up until brought forth on cross-examination.

You will recall, if you have read any portion of this record, that in addition to the question of the instructing in Sunfield there was a question of a very serious adjournment, and then reconvening in the middle of the night, in the absence of the Democratic supervisor, and the Republican postmaster, it seems came in and took his place and helped in the count and the Democrat was allowed to go out. This affidavit recites this: "There was some talk about adjournment, but the prosecuting attorney advised us to go ahead," advised us it was against the law that John Palmer left the polling place. In other words, it does not state emphatically that there was any adjournment, but it is couched in such clever language that to one who had no knowledge of the fact would lead him to believe that there was not anything of the kind down there. That is one reason I say it is unfair on the face of it, produced by the man who treated me unfairly before the Eaton County board of canvassers, who said he knew he was violating the law by putting ballots in the ballot box, that he was a lawyer and that he knew it was against the provision of the law. There is another reason Mr. Bera was a witness in this case for the contestee, the man who was postmaster down there in Sunfield, who sat on the board between the hours of 2 and 5 in the morning without any authority at all. We then raised the question as to his authority to be there, and we had raised the question of his interest there, and when he testified that he had not any interest at all in the election of John M. C. Smith, we finally found, gentlemen of this committee, that this man Joel Bera, was a man who swore that these people or one of them, to this very affidavit. He was the postmaster there.

It was perhaps a very innocent thing in itself to have testimony of Knapp, which shows that Joel Bera passed this identical affidavit through the United States mails without any postage at all. That is the evidence in this case, and that, I charge is why this affidavit was not procured until brought out by the pressure of Hon. John W. Adams, circuit judge of our county, who was after the gentleman at the time. This is why it was brought forward, and that is why it was conceded, that is why I challenge my brother that he said to us "You can make all the proof to us. We refuse to produce the original," and he now has the nerve to call upon the attorney general of the State of Michigan to tell you that he did not conceal anything.

Mr. FELLOWS. Mr. Carney, if you say that I had any knowledge——

Mr. CARNEY. I am quoting the record in this case and am directing your attention to nothing but the record in this case, gentlemen, and my friends should not interrupt me for quoting and drawing my deduction from the record.

Now I want to take you back——

Mr. FELLOWS. Do you say I had any knowledge that there was anything wrong with that affidavit? If you do, I say that your statement is absolutely untrue.

Mr. CARNEY. Oh, I do not make any such statement. I am telling you what the testimony of three of their witnesses is, and I ask you to draw this conclusion or not as you see fit. I take you back now to the city of Battle Creek. My brothers say I acted very unfairly over there.

Oh, gentlemen, I knew the condition in Climax. I knew that I had a number of votes over there that belonged to me, that no power beyond the power of this committee could reach, and the authority of the Federal statute. The decisions of the supreme court have been final upon that point. My brother agrees with me upon that. I insisted that the face of the returns stood—I insist upon it now—until the count

was made under a Federal statute, which was in existence then for my protection and for my brother Smith's protection. The township of Climax is one that has required no discussion here, because the result is now conceded.

What was the cause of 38 ballots getting into the ballot box and not getting into the count is immaterial, but the facts were there and I had to abide by them in making up this certificate. I said to the county board of canvassers of Calhoun County: "You have no right to arbitrarily change these votes and change this return. Let the contestee in this case abide by the same rules that I am forced to abide by; that I may be present and know what the correct result is."

Did they? They said, "That is right; we will." Did Mr. Smith go there the next day prepared with affidavit of some one from Eaton or Calhoun County? No; he went there with Hogget, with John Davies, of Battle Creek, and two or three other committeemen and by force of numbers and persuasion, or what not, or simply his presence, I do not know, they brought the ballot box over the second time. The second time, mind you, the ballot box was brought from the city of Battle Creek, making a distance traveled of 60 miles for that board of inspectors, and deliberately raised this certificate, these returns, as has been shown here in this record. I challenge now the conduct, I challenge the legal right, and I challenge the good faith of that ballot box, and I am going to tell you why. Oh, my brothers who say here, "Why don't you agree to a count?" Then we do not ask them to agree to any count in Climax, because their petition shows and our evidence shows that that ballot box was protected absolutely, and warning was given to protect it, that no man might be injured, and it was brought before the commissioner with the seal of the county board of canvassers intact, and the testimony shows that it has never been opened.

The seal was there—the opening seal. Was that true of Battle Creek, the second precinct? No; and there is a piece of evidence in this case, gentlemen, to which your attention has not been called. The evidence shows, in the first place, all along that the method of finding this piece of paper was very peculiar, to say the least. It was unsigned; it did not contain my name nor Smith's name. It was just some rough figures, and the very argument that my brother presents here is an argument against the use of such a document for correcting any returns. He says the reason that this statute differs from the other is because there is no tally sheet provided for the local-option statute. All right. The natural inference is that the tally sheet that ought to be in the ballot box is that portion of the returns that the board has the right to refer to. That is the only difference, he says. That is fair logic; it is fair argument that Mr. Fellows made to you. I think his reasoning was good, and I think the next deduction was equally as good. If that tally sheet showed imperfections or corrected mistakes, that was part of the returns; it was signed by the board and they had a right to rely upon it. I say it is dangerous practice for any court to lay down the doctrine that you can take a blank piece of paper without signature, without even the name of the candidates, and upon that kind of evidence base the right to a seat in the Congress of the United States, and additionally show, when you see that ballot box brought in with the edge crumpled up in such a manner, and as their own witness says that this paper could have been placed in that box; and more so than ever when you find that the box when before that board had that paper in it with no signature. Every member that was there testified upon that proposition, my brothers, that not one of them ever saw that paper before that hour.

More than that, I want to read to you something which shows that that ballot never could be counted after that time. Why? The seals had been broken; the box had been unlocked; they did not have to pry it open; nobody knew whether it contained the same ballots or not. I am reciting from the evidence, if you please. Why? Because the seal that was upon it before that board was not the seal placed upon it at the time the board of canvassers adjourned; because it had been turned over—the key and the box—that the janitor in the city hall at Battle Creek, who had nothing to do with elections, who had opened that box, we do not know how many times I read the record.

The CHAIRMAN. What does that evidence disclose as to why this box was delivered to the janitor in the courthouse?

Mr. CARNEY. I do not know. It was given to him to take the books out.

Mr. FELLOWS. The boxes are returned to the city recorder of Battle Creek, and of course were taken care of by the man who had charge of the city clerk's office.

Mr. SMITH. To get the tally book out for the primary election we were having on local option. He was told to go down and get the tally books.

The CHAIRMAN. What page is that?

Mr. CARNEY. This is the examination of Thomas H. Thorne, on page 439. They brought him in to show that the tally books were there and had not been tampered with, and this is what they found (reading):

"Q. Has it remained locked and sealed from the time it was delivered into your possession here in this courthouse at the time the board of county canvassers had it before them until now?—A. No, sir.

"Q. What was the occasion of it being unlocked or unsealed?—A. To remove the registration book, also the enrollment book.

"Q. When was that?—A. I don't remember the date.

"Q. After the recent primary election?—A. Prior to the primary election.

"Q. The one that was held this year?—A. Yes, sir.

"Q. Who was present when the box was opened?—A. The custodian alone.

"Q. That is yourself?—A. No, sir; the janitor in the city hall, the general utility man.

"Q. Were you present?—A. No, sir.

"Q. Do you know what was done with the box after that?—A. I directed them to lock up the box.

"Q. Do you know of your own knowledge?—A. No, sir.

"Mr. ADAMS. I move to strike out what he instructed them.

"Q. What is the condition of that ballot box now?—A. It is locked.

"Q. Is it sealed?—A. Yes, sir.

"Q. When you were here before the board of county canvassers, what was done with the box?—A. I saw the box opened and the contents taken out; as I remember, they were rolled up but not disturbed by anyone.

"Q. What further did you see?—A. As I remember, the poll books were taken out and examined by the county election commissioners."

On the next page, omitting several questions and answers. (Reading:)

"Q. After they had examined the contents, what was then done?—A. The contents were put back in the box, and the commissioners locked and sealed the box.

"Q. Was there any attempt upon the part of anyone there to open or examine those bundles of ballots?—A. Not to my knowledge.

"Q. In what condition or situation were those ballots; how were they bundled together?—A. I didn't notice, only that I know they were rolled up and tied.

"Q. Rolled up in rolls and tied up?—A. Yes, sir; I didn't examine them.

"Q. There were several rolls?—A. Yes, sir; I don't know how many.

"Cross-examination by Mr. ADAMS:

"Q. How long ago was this ballot box opened next after the board of county canvassers had the box?—A. I couldn't state exactly, but it was prior to the primary election.

"Q. Of your own knowledge, you don't know whether it was opened at all after the board of county canvassers opened it?—A. No, sir; I do not; only I instructed the man to open the box.

"Q. Then, of course, you don't know if he did open it what he did with the ballots when he opened it?—A. No, sir.

"Q. You don't know of your own knowledge now whether the ballots are the same ballots or have in any particular been changed from what they were when the box was brought here after the election before the board of county canvassers?—A. I couldn't swear to it; no, sir.

"Q. The janitor in your building where your office is located at Battle Creek is the man who does the general janitor work?—A. Yes, sir.

"Q. The public utility man you speak of?—A. He does the janitor work.

"Q. The janitor of the building, doing the sweeping, etc., in the building; you helped him to open that ballot box?—A. Under my instructions; yes, sir.

"Q. You didn't give any personal supervision to the opening of it, or anything of that kind, yourself?—A. Only instructions; not personally.

"Q. I mean you were not actually present?—A. No, sir.

"Q. You turned it over to a couple of janitors in the building to open the ballot box?—A. There wasn't two; there was but one.

"Q. One and the same man?—A. Yes, sir.

"Q. The janitor and the public utility man are one and the same person?—A. Yes, sir.

"Q. You instructed him and gave him the key of the box?—A. Yes, sir.

"Q. And instructed him to go there and open up these ballots that had been voted at the November 5, 1912, election?—A. To open the ballot box.

"Q. After he opened the ballot box he had free access to the ballots, if he wanted to?—A. Yes, sir."

My brother has the right to produce the box under the Federal statute, and under the same statute we operated in Climax. We had no knowledge of what the box contained. They did not insist upon their rights. They did not cause the count to be made, whatever it might show. They took the chances as it was. I say to

this committee that under our decisions and the decisions of every State if that would have made the count you would have paid no attention to it, because the seal on the box had not been kept inviolate and because on that kind of evidence you have no evidence at all, because the very spirit of our election law, of sealing the box, of placing the key in the hands of one man, the seal in the hands of another man, and the box in the custody of still another, showed that it was intended, as our supreme court has said time and again, that a box that had been tampered with, a box that had been opened, could not be made the basis of a recount. They offered to produce the man John James, the utility man, and we consented to it, and I will read you from the record—talk about fair play, Mr. Smith has had fair play all the way through this thing; he has had everything conceded to him by every board, and every legal right has been conceded to him, even to this amendment at the latest dying hour of this argument, and then without notice we entered into this stipulation down there. It was consented on the record that John James, the utility man, be subpoenaed and put on the stand without contest and without further notice. They did not produce him. They probably say they did not have the time or could not find him, or something. Anyway, they did not produce him, and we stood there and offered no obstacles.

We would not consent and agree to be bound by a box that had been used as this box had been, having the appearance that it had, with the record that it had back of it, and then for him to say to me that these questions have been determined all fairly and in favor of the minority candidate, I say to you that every question up to this hour has been determined upon a partisan basis. Here we ask of you, gentlemen, nothing but our legal rights, and say to you that with this kind of a count—take the Climax precinct—take the booths from every precinct that was possible, where every possible chance—will you show me one single place that we could benefit, one single, solitary vote, and when we come to consider that the third district of Michigan contains over 40,000 votes, with 150 precincts, with a majority on its face of 116, with what you now have before you, as honest men, you know how those election boards are, as men we all know, without charging them with anything, their natural tendency down there among their friends is partisan. They may honestly differ upon many ballots. A gentleman told me that that a difference of less than a precinct is not the thing that gave Smith, the contestee, the certificate that never did belong to him under the laws of Michigan, and I do not believe that any court will give it to him now.

Thank you.

The CHAIRMAN. For your information, gentlemen, we have concluded that we will not settle this case probably before the holiday recess. We want to look over these statements that you have made before the committee carefully, and the briefs, and give it all proper consideration. Have you gentlemen anything else you want to say in regard to it at close of the hearing?

Mr. FELLOWS. I think you have been fair enough.

Mr. SHIELDS. I feel sure, so far as we are concerned, that you have been extremely kind and patient with us, and we have nothing to add, unless the committee should desire some further argument on some question, and that is for them to decide. If you should, and will notify us, we will be glad to do anything at your suggestion, but we have nothing further of our own volition.

The CHAIRMAN. You will probably be notified of the action by the committee by whatever resolution we conclude to offer in the House.

Mr. SHIELDS. We have nothing more to volunteer, and no further statement to make, unless you, as chairman, request us to appear before you.

Mr. CARNEY. I had a tabulation—perhaps I sent it to Mr. Smith—of all those different votes figured out proportionately, according to that Michigan rule.

Mr. SMITH. It is in the brief?

Mr. CARNEY. No; under the rule only your side is figured.

The CHAIRMAN. We do not object to you furnishing any additional information in a documentary way that you can.

Mr. SHIELDS. There will not be anything further.

Mr. SMITH. You ought to give me a copy of that tabulation if you file it, and if I file anything I will be glad to give you a copy of mine.

Mr. CARNEY. It was simply a tabulation of the Michigan rules.

Mr. BORCHERS. I would like to have a copy of your tabulation.

The CHAIRMAN. Gentlemen, the committee will now stand adjourned until 10 o'clock next Monday morning.

(Whereupon, at 5.15 o'clock p. m., the committee stood adjourned to meet next Monday, December 15, 1913, at 10 o'clock a. m.)

U. S. Congress, House, Committee on
elections no. 1

CONTESTED-ELECTION CASE OF CLAUDE S. CARNEY v.
JOHN M. C. SMITH.

JANUARY 30, 1914.—Referred to the House Calendar and ordered to be printed.

Mr. Post, from the Committee on Elections No. 1, submitted the
following

REPORT.

[To accompany H. Res. 396.]

In the contested-election case of Claude S. Carney v. John M. C. Smith, coming from the third congressional district of the State of Michigan, the following report is respectfully submitted from the Committee on Elections No. 1, to which it was referred:

The committee has carefully examined the evidence contained in the record, heard the arguments of the respective parties, and has given the case most careful and painstaking consideration.

The case arises out of the election held on the 5th day of November, 1912, for the election of presidential electors and public officers, including Representative to Congress from the third congressional district of Michigan.

This district is composed of five counties—Kalamazoo, Calhoun, Hillsdale, Branch, and Eaton. The State board of canvassers, composed of the secretary of state, treasurer of state, and the commissioner of the land office, canvassed the returns of the district on the 10th day of December, 1912. By their canvass it was shown that John M. C. Smith received 14,609 votes, and the contestant, Claude S. Carney, received 14,482. The certificate of election was duly issued by the board of canvassers to Mr. Smith, and when Congress convened in extraordinary session, at the beginning of the Sixty-third Congress, Mr. Smith appeared at the bar of the House, took the oath of office, and has ever since been serving as a Member. On the 4th day of January, 1913, the contestant served notice upon the contestee of his intention to question his right to a seat in the House. In his notice the contestant alleged that, notwithstanding the fact that upon the face of the returns Mr. Smith was elected by a majority of 127 votes, such a result was brought about by false, fraudulent, and

illegal returns from several of the precincts in the district by inspectors of the election, by falsely counting ballots and by corrupt and unlawful conduct of the various boards of the election—inspectors, officers, and other persons.

TOWNSHIP OF CLIMAX, COUNTY OF KALAMAZOO.

In the township of Climax, county of Kalamazoo, the parties to this action succeeded in assembling the entire election board of that township and by agreement a recount of the ballots was had. Upon the face of the returns as made by the supervisors of elections, John M. C. Smith was given 83 votes and Claude S. Carney 82 votes; this recount was had upon the suggestion by some of the election officials that a mistake had been made in canvassing the vote. Upon a recount of the ballots it appeared that Claude S. Carney received 100 votes and John M. C. Smith 90 votes. This reduced John M. C. Smith's plurality from 127 in the district to 116. Your committee makes no question as to the right and duty to accept the revised figures as to the township of Climax. We do not believe that in the original canvass of the votes in that township there was any intentional fraud. The evidence shows that the election officials were unanimously of the opinion that when the original figures were received that they could not be correct; that more votes had been cast in that precinct than the total as shown by the returns. Besides, contestant and contestee agree that the correction should be made.

WARD 3, CITY OF CHARLOTTE, EATON COUNTY.

The contestant complains of the conduct of the election in ward 3, city of Charlotte, Eaton County. The vote as canvassed in this county shows that John M. C. Smith received 214 votes and Claude S. Carney 116 votes. It is contended on the part of the contestant that two of the elections inspectors, Evander Dunning and J. B. Dowdigan, both Republican inspectors of the election, repeatedly went into the booths when the voters were preparing their ballots without requiring such voters to take an oath that they could not read English or did not come within the other requirements of the law as to such an oath.

Section 3642, Michigan Compiled Laws of 1897, paragraph 169, provides:

When an elector shall make oath that he can not read English, or that because of physical disability he can not mark his ballot, or when such disability shall be made manifest to said inspectors his ballot shall be marked for him in the presence of the challenger of each political party having a challenger at such voting place, by an inspector designed by the board for that purpose, which marking shall be done in one of the booths.

Section 3643, Michigan Compiled Laws of 1897, paragraph 170, provides:

It shall be unlawful for the board, or any of them, or any person in the polling room or any compartment therewith connected, to persuade or endeavor to persuade any person to vote for or against any particular candidate or party ticket.

One witness testified that Dunning and Dowdigan went into the booths when voters were preparing their ballots without requiring said voters to take the oath prescribed by the statute. This same

witness testified that he heard Dunning make suggestions to the voters to vote for John M. C. Smith. He said he and Dunning had some trouble about it; that he told Dunning that the soliciting of votes should be stopped, and received the response, "What are you going to do about it?" He said that he heard the same suggestion made to all the voters who asked for instructions; that there were seven or eight who asked for instructions; that he heard no suggestions made for any other candidate than John M. C. Smith. Dowdigan in his testimony admits that he suggested to one voter whom he was assisting to vote the name of John M. C. Smith, and that he went into the booth not to exceed three times. Dunning admits that he solicited one voter to vote for John M. C. Smith. One of the clerks testified that he heard Dunning say to a voter, "How about J. M. C. Smith or John M. C. Smith?" For this mistake on the part of the board of election inspectors it is insisted that the whole poll of ward 3 in the city of Charlotte should be thrown out; that the provisions of the Michigan laws prohibiting the soliciting of votes by election officials is absolutely mandatory, and notwithstanding the fact that the solicited votes might be segregated from the entire poll, nevertheless such conduct will vitiate the whole precinct.

The complaint to the effect that these voters who were instructed and assisted in preparing their ballots were not sworn may not be tenable. If the disability of the voter is manifest to the inspectors of the election, then the oath is not required to be administered, and no evidence was produced to show that the disability was not manifest to the inspectors of the election; that these two provisions of the Michigan election laws are mandatory under the decision of the Supreme Court of Michigan there can be no question. In the case of *Attorney General v. McQuade* (94 Mich., 439) the Supreme Court, in discussing these provisions of the law, used this language:

These provisions of the law must be held mandatory or else the purpose of the law is defeated and the opportunities for fraud are increased rather than diminished.

If an inspector or other person be permitted to enter the booth with the voter the danger is far greater than under the old system, where there was some opportunity to see and detect fraud. Under this practice venal voting could be readily accomplished. The law is designed to secure absolute secrecy to the elector, and thus prevent all opportunity for corrupt practices. The law does not permit parties to profit by such frauds, though they may not have participated in the fraud.

Should the entire precinct be thrown out on account of the admitted mistake occurring in this precinct? Is it possible to segregate the tainted votes from those that were fairly cast? We must concede under the case cited, the law in this respect being mandatory, that the votes sought to be influenced by the election inspectors must be cast out. In the *McQuade* case the court cites with approval the following excerpt from *Payne on Elections*, section 499, and *McCreary on Elections*, sections 190 and 192:

When fraud on the part of the officers of the election is established, the poll will not be rejected, unless it shall prove to be impossible to purge it of fraud. When the result at a poll, as shown by the returns, is false and fraudulent, and it is impossible to ascertain the actual vote from the other evidence in the case, the vote of such poll must be wholly rejected.

This rule is certainly founded in good sense and is sustained by the overwhelming weight of the authorities.

In the American and English Encyclopedia of Law, page 353, the rule is thus laid down:

Fraud does not invalidate the legal votes cast, but by destroying the presumption of the correctness of the returns it makes it necessary that any person who claims any benefit from the votes shall prove them; and where no proof is offered and the frauds are of such a character that the correct vote can not be determined, the return of the precinct will be rejected.

The total vote cast in this precinct was 363. The record shows the mistake complained of did not apply to more than 8 votes. Should 355 voters be disfranchised, the integrity of whose ballots can not be and is not questioned? To segregate the tainted votes in this ward would be in harmony with the great weight of the authorities, and give full force and effect to the mandatory provisions of the Michigan laws relative to the marking of the ballots, but we do not believe that more than 8 votes should be deducted from the poll in this precinct. We believe such a conclusion is in exact accord with the intent and spirit in the decisions laid down in the case of the Attorney General *v.* Furgason (91 Mich., 438) and Attorney General *v.* May (99 Mich., 545).

If the records show that the soliciting of votes in this precinct was open and continued during the whole day, the opposite conclusion should be reached; but we have searched the record in vain to find that these two election inspectors solicited any of the voters except those who called for instructions. In neither of the three cases cited, and upon which the contestant relied, did the Supreme Court of Michigan hold that the entire poll should be vitiated.

SUNFIELD TOWNSHIP, EATON COUNTY.

In this precinct the record discloses that John M. C. Smith received 174 votes and Claude S. Carney 104 votes.

It is provided by the laws of Michigan that the township supervisor, two of the justices of the peace whose term of office first expire, and the township clerk shall constitute the board of inspectors and perform the duty of judges of elections, and that the township clerk, together with a person chosen from the electors present at the polls, shall constitute the clerks of the election. In this township after the polls were closed, the board continued the counting of the ballots until about 12 o'clock of that night, when the inspectors then made a motion that the board adjourn until the next morning, to finish counting the ballots. This motion was carried and the board adjourned leaving the ballots, tally books, poll books, and statement books in the voting place. At the time of adjournment about one-half of the ballots had been counted. It is not certain whether the ballot box was locked or not. The entire board left the voting place and turned out the lights; after leaving the voting place it occurred to some of the inspectors that they had no legal authority to adjourn the count and they called upon the prosecuting attorney of the county, who advised them that such adjournment was improper. They then reassembled and continued the counting. The record discloses that there was a great number of mixed ballots; that the count was exceedingly laborious and the entire board worn out, was the reason for the adjournment. There was no intentional fraud contemplated by the adjournment; it was not claimed nor shown

that during the adjournment that any of the ballots were disturbed or that the count, as far as it had proceeded, had been modified in any particular whatever.

I do not believe that any one would contend for a single moment that the poll of this precinct should be thrown out simply on account of this unwarranted adjournment. To disfranchise the 345 electors who voted in this township at that election upon this mere irregularity would certainly be a most dangerous precedent.

Upon the reorganization of the polls in this township the board of inspectors appointed Albert Sayer what they called an instructor of election, and administered to him an oath as such instructor. They assigned to him the duty of delivering the ballots to the voters. He served in this capacity during the whole of the day. It is not shown that he did anything other than the delivering of the ballots to the voters, except that he saw one man mark his ballot who entered the booth, and that he told two men how to mark their ballots. That the appointment of Albert Sayer was not authorized by the election laws of the State can not be questioned. By the Michigan Compiled Laws of 1897, section 3640, page 167, it is provided that:

No ballot shall be distributed by any person other than one of the inspectors of the election, nor in any place within the railing of the voting room, to show electors how to vote, and no ballot which has not the initials of a member of the board of election, written by such member on the back thereof, shall be placed in the ballot box.

The contestant claims that the entire vote of this precinct shall be thrown out and bases his contention upon the decision of the Supreme Court of Michigan, rendered in the case of Attorney General ex rel. McCall v. Kirby (120 Mich., 592). That case is easily distinguishable from the case under consideration. The court says:

In determining the title to a county office, the vote of a township should be excluded where it appears that in such township the mandatory provision of the election law requiring the official ballots to be kept in the custody of an inspector was violated by the appointment of an unofficial person as "instructor" to distribute the ballots, and allowing him access to the voters, even after they had entered the booths, although the parties acted in good faith and it is not shown that voters were unduly influenced.

There the unauthorized person was given access to the voters after they had entered the booth. Here it is not claimed that Sayer ever entered the booth with a single voter. A majority of this board were Democrats; the so-called instructor was a Democrat, and an adherent of the contestant, and testified that he voted for him. The statute requiring that the ballot shall be delivered to the voters by an inspector is unquestionably mandatory, but nothing is shown that anything occurred of a venal or dishonest character on the part of Sayer in the conduct of his duty. There was nothing took place, either during the time the ballots were being cast or in the count, that could by any possibility be construed into fraud or intentional wrong, or that could change or influence the result. While the Supreme Court of Michigan might not differentiate the facts in the case of The Attorney General v. Kirby from the facts disclosed by the record, we do not believe that a committee of this House, looking for the truth to determine who in fact was elected by the voters, should, on account of this irregularity, disfranchise the electors of this township. No question is made but that the ballots cast in this precinct were cast by legal voters and in good faith. Nor is it claimed that the contestee received a single vote more than was intended to be cast for him, or that the

contestant lost a single vote. We do not believe that the facts warrant the rejection of the entire poll of this township, nor does the law as practiced in almost every jurisdiction warrant such a result. McCreary on Elections, section 488, says:

The power to reject an entire poll is certainly a dangerous power, and, though it belongs to whatever tribunal has jurisdiction to pass upon the merits of a contested-election case, it should be exercised only in an extreme case; that is to say, where it is impossible to ascertain with reasonable certainty the true vote.

Paine on Elections, section 497, says:

Ignorance, inadvertence, mistake, or even intentional wrong on the part of the local officers should not be permitted to disfranchise a district.

Section 498 says:

The rules prescribed by the law for conducting an election are designed chiefly to afford an opportunity for the free and fair exercise of the elective franchise, to prevent illegal votes, and to ascertain with certainty the result.

The departure from the mode prescribed will not vitiate an election, if the irregularity does not deprive any legal voter of his vote, or admit an illegal vote, or cast uncertainty on the result and has not been occasioned by the agency of a party seeking to derive a benefit from them.

Power to throw out the vote of an entire precinct should be exercised only under circumstances which demonstrate beyond a reasonable doubt that there has been such a disregard of law or such fraud that it is impossible to determine what votes were lawful or unlawful, or to arrive at any result whatever, or whether a great body of voters have been prevented from exercising their rights by violence or intimidation. (Case of Daley v. Petroff, 10 Philadelphia Rep., 389.)

There is nothing which will justify the striking out of an entire division but an inability to decipher the returns or a showing that not a single legal vote was polled or that no election was legally held. (In Chadwick v. Melvin, Bright's Election cases, 489.)

Nothing short of an impossibility of ascertaining for whom the majority of votes were given ought to vacate an election, especially if by such decision the people must, on account of their distant and dispersed situation, necessarily go unrepresented for a long period of time. (McCreary on Elections, 489.)

If there has been a fair vote and an honest count, the election is not to be declared void because the force conducting it were not duly chosen or sworn or qualified.

Paine on Elections, section 377. In Wells v. Taylor (5 Mont.), it is said:

Under statutes requiring judges of election to be chosen by a majority of the voters present and voting, if a person who is a resident and a voter of the district, without a formal choice by the voters, act as judge and return the results with no objection on the part of the voters, the chancellor will not declare the election void or restrain the collection of a tax authorized by the vote of the electors.

Upon the question of a recess taken by the officers, we cite Paine on Elections, section 463:

A recess of an hour taken by the officers at noon for dinner without fraudulent or wrongful purpose or result will not warrant the rejection of the poll of the precinct.

It is decided even in Michigan, in the case of The People v. Avery (102 Mich., 572), that electors are not to be deprived of the result of their vote at an election by mere mistakes of their officers when it does not appear to have changed the result.

Complaint was also made that Mr. Bera, a Republican postmaster, was permitted to assist one of the clerks in tallying the vote during the count; that Mr. Bera tallied about 15 votes; he did not inspect or handle any of the ballots; two sets of books were kept by the clerks; and no evidence is disclosed by the record that the books kept by the clerk who was assisted by Bera differed in any particular whatever from the tally kept by the other clerk; and there was no

showing that the contestant did not get credit for every vote that was cast for him. It certainly can not be successfully contended that the entire poll, or any part of it, should be cast out.

SECOND WARD, CITY OF CHARLOTTE, EATON COUNTY.

In this ward John M. C. Smith received, on the face of the returns, 161 votes and Claude S. Carney 107 votes.

The contestant complains that one John C. Nichols, who was not a member of the board of election inspectors, was permitted to deposit some ballots in the box during the progress of the voting. A brief review of the testimony upon this point will disclose the situation. F. M. Overmire was the Democratic challenger and entitled to be within the rails of the voting place. He testified that he saw John C. Nichols take quite a number of ballots, passed to him by voters, and that he announced the name of the voter and deposited the ballots in the box. He says that as near as he can remember Nichols was engaged in this work from an hour to an hour and a half, but says, "I might be a little off in that, but that is my best recollection at this time." E. G. Davids testified that he saw John C. Nichols receiving ballots and depositing them in the ballot boxes for the space of about 10 minutes.

In rebuttal of this testimony John C. Nichols testified that Mr. H. A. Hamilton, one of the election inspectors, was taken sick, left the polls, and did not return that day. This was near the noon hour. Mr. Knowles, one of the inspectors, was handing the ballots to the voters. The departure of Mr. H. A. Hamilton left no one to receive the ballots from the voters. Mr. Knowles requested Mr. Nichols to receive the ballots and deposit them in the box; that he received four, five, or six and deposited them in the box; that he was not engaged in receiving ballots to exceed 10 or 15 minutes, when he was relieved by Roy Barber, who was a member of the board; that he did nothing further in the conduct of the election on that date. Nichols was a challenger of the Republican Party, and as such was entitled to be within the railing. Mr. Hamilton testified that he was taken sick; that he was sick on the night before the election, but went to the polling place and remained until about noon, when he became so sick he was compelled to go home and go to bed and was not able to return to the election place either at the time of the ballot or count.

C. R. Barber shortly after Mr. Hamilton left the voting place was sworn in to take the place of Mr. Hamilton and received the ballots from the voters from the time he was sworn in until the close of the polls at 5 o'clock.

Claude S. Knowles, one of the inspectors, testified that Mr. Hamilton acted as an inspector until he was too sick, then his place was supplied by Roy Barber.

As to the reception of the ballots by John C. Nichols, he testified that he asked him to receive the ballots and place them in the box; he says that it was during the noon hour; that there was a rush and that he was too busy to wait upon the voters; he being engaged in giving out the ballots was the reason why he asked Mr. Nichols to receive the ballots; that shortly after Mr. Nichols began work Roy

Barber came in; he administered the oath to him and he relieved Mr. Nichols; that Nichols did not receive more than five, six, or seven ballots.

Roy S. Preston, one of the clerks of the election, testified that he saw John C. Nichols receiving ballots for a few minutes and that he saw him put two or three ballots in the box.

A careful inspection of this testimony shows that John C. Nichols was the Republican challenger entitled to be within the railing, and by a fair preponderance of the testimony that he did not receive and deposit more than seven ballots; that he was at the time a candidate upon the Republican ticket for the office of circuit court commissioner. Upon this testimony the committee was asked by the contestant to cast out the entire poll of the ward. In this connection what we have heretofore said in reference to Albert Sayer in Sunfield Township disposes of the contention that no ballot should be received and placed in the box except by an election inspector, where no actual fraud is shown to exist.

Section 3612, paragraph 139, of the Michigan Compiled Laws of 1897, provides:

That at all elections at which any presidential elector, Member of Congress, member of the legislature, State or county officer, or circuit judge is to be elected, or any amendments to the constitution, the supervisor, two justices of the peace not holding office of supervisor or township clerk whose term of office will first expire, and the township clerk of each township, and the assessor, if there be one, an alderman of each ward in a city, shall be the inspectors of election: *Provided*, That in all voting precincts where by special enactment provisions exist for designating inspectors of election said provisions are not to be superseded, but such officers shall be the inspectors of election under this act: *And provided further*, That no person shall act as such inspector who is a candidate for any office to be elected by ballot at said election.

It will be noted by this law that no person shall act as inspector who is a candidate for office at such election. Contestant relies upon the case of *The Attorney General ex rel. McCall v. Kirby* (120 Mich., 592) for authority to cast out the entire poll of this ward.

The case here is clearly distinguishable from the facts in the Kirby case. In the latter case a Mr. Kerr was intrusted with the ballots and went freely into the booths with the voters; that Kerr's custom was to ask the voters if they knew how to vote, and if they desired instructions he took their ballot, sometimes holding it against the wall, and gave instructions; the evidence discloses that he talked with the voters while in the booths, he standing in the door of the booth; several voters testified that he showed them on their ballots how to vote for the respondent if they desired to. No such facts were disclosed in this case as to the conduct of John C. Nichols. On the contrary, the record shows that Mr. Nichols was present during the count on the night of the election; that there were two Republican candidates for the office of circuit court commissioner and a Democratic candidate. There was a blank space opposite Nichols's name upon the ballot on the Democratic ticket. When there was a cross opposite Dean's name, the other Democratic candidate for circuit court commissioner, and neither of the two other names were scratched off, Nichols contended that the vote should not be counted for Dean, and the same way when there was a cross opposite either of the Republican names. There was only one circuit court commissioner to be elected, and the contention Nichols made was right beyond controversy, which shows conclusively his honest intention.

Quite a different situation from the conduct of Kerr in the Kirby case.

What the Supreme Court of Michigan might do with the facts in this case it is not necessary for us to determine, if the House has established a precedent covering such a case. In the contested election case of *Spaulding v. Mead*, arising from the ninth congressional district of the State of Georgia, and decided at the first session of the Ninth Congress, as early as December 18, 1805, it was decided that the power of the House to judge of the election of its Members could not be concluded by a State law or the executive.

In the contested election case of *Williams v. Settle*, reported to the House in 1895, the Elections Committee held that the handling of ballots by parties other than the officers does not necessarily cause rejection of the poll, and intimates that even had the judge been a candidate for Congress and the proof discloses that the election was honestly and fairly conducted there would be no grounds for rejection of the entire poll.

In the election case of *Lynch v. Chambers*, Forty-second Congress, decided in 1882, *Hinds' Precedents*, volume 2, section 959, it is said:

Election laws are or may become vital to the existence and stability of the House of Representatives, and to hold it must shut itself up in the narrow limits of investigating solely the question as to whether the election has been conducted according to the State laws as interpreted by its own judiciary would be to yield at least a part of that prerogative conferred by the Constitution on the House itself.

It is contended by the contestant that the Supreme Court of Michigan upon the points involved ought to be followed by Congress, and that it is against the settled doctrine of both Congress and the Federal judiciary to disregard the decisions of State tribunals in construing their own laws. The position can not be successfully maintained. Where a line of decisions have been made by the judiciary of a State and those decisions have become a rule of property, the Federal judiciary will follow them; but the rule is different as to all other cases. In the case of the *Township of Pine Grove v. Talcott* (19 Wall., 666), the Supreme Court of the United States in passing upon the validity of a Michigan statute says:

It is insisted that the invalidity of the statute has been determined by two judgments of the Supreme Court of Michigan and that we are bound to follow these adjudications.

With all due respect to the eminent tribunal by which these judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. The question before us belongs to the domain of general jurisprudence. In this class of cases this court is not bound by the judgment of the courts of States where the cases arise; it must hear and determine for itself. It must be conceded that in matters not local in their nature the Supreme Court of the United States has uniformly held that the decisions of the State courts were not binding upon it. (*Swift v. Tyson*, 16 Pet., 1-18.)

A cogent reason why Congress should not be bound by decisions of State tribunals with regard to election laws, unless such decisions are founded upon sound principles and comport with reason and justice, is that every State election law is made a Federal law by the Constitution of the United States, where Congress has failed to enact laws on that subject. To say that Congress shall be bound absolutely by the adjudication of the State courts on the subject of the election of its own Members, is inimical to the soundest principles of national unity. If a State legislature should pass a law unreasonable and unjust in its terms, and the State courts should uphold such

unreasonable and unjust law, should Congress be bound by such law or adjudication? To say that it should would be subversive of the constitutional provision that each House shall be the judge of the election, qualifications, and returns of its own Members.

The House in deciding upon a Federal election case acts in the capacity of a court, and it should not be bound by decisions of the State courts unless the reasons given by them are not only convincing but sound. There was cast in the second ward, city of Charlotte, county of Eaton, 300 votes for the office of Representative in Congress. By a fair preponderance of the evidence it is shown that John C. Nichols did not handle more than 7 ballots; no question was made as to the honesty and bona fides of the voters who cast the 300 ballots for Representative in Congress. So far as the evidence discloses, every ballot was cast by a qualified elector. To cast out this entire poll and disfranchise 300 electors, every one of whom intended to and did honestly vote for some one of the candidates for Congress, does not, in our opinion, comport with the precedents firmly established by this House. In the absence of any proof of misconduct or fraud on the part of the election inspectors, or on the part of John C. Nichols, to nullify the poll of this ward, would not be in keeping with the precedents of the House. We believe that the entire poll should be counted as cast and canvassed in accordance with the canvass made by the supervisors of elections. The very most that your committee believes that the contestant can claim is that the 7 ballots alone might be purged from the poll. To go beyond this, in our opinion, would be to do violence to the expressed will of the public.

CARMEL TOWNSHIP, EATON COUNTY.

In this township about 2 o'clock in the afternoon of the election, the ballot box furnished by the proper authorities to the board of inspectors became full of ballots. The election officials after consultation unlocked the box, poured the ballots out upon a table, within the railing of the voting place, reclosed the box and went on receiving ballots, placing them in the ballot box until the close of the polls. Two outsiders, William Clements and Cortez Cushing, were called in and sworn as extra clerks. Clements was a Republican, and Cushing a Democrat. After the box was emptied, Cushing sorted the ballots, placed the straight Democratic votes in one pile and the straight Republican and other votes in another, and the split votes in a third pile. The two alleged clerks then tallied the straight Republican and Democratic votes. After this Huber, the supervisor, read the names from the split votes and they were tallied as read by the two clerks. This count proceeded until the close of the polls, after which it was finished and the second box was opened and the count continued until its conclusion, about 11 o'clock.

Clements testified that every vote counted was compared; that whenever Huber would read off a name or a vote for one man, he would say the number of votes that there was; if this tally did not correspond with that kept by Cushing, they would go back and make the correction. That this occurred once or twice; that in making the correction they would recount all of the ballots; that when the tallies did not correspond it was only a difference on one candidate; that

he helped finish the count of those that were on the table and that the count was completed shortly after 5 o'clock; that as near as he could remember he assisted in counting about 140 votes. He says that the tally was honestly and correctly made.

Cushing says that as far as he knew the count was honest and correct and that Mr. Carney was credited with every vote that was cast for him; that John M. C. Smith received only the votes that were cast for him. Neither Clements nor Cushing took any part whatever in distributing among or receiving ballots from the voters. All the ballots were read and announced by an inspector of elections. In this township John M. C. Smith received 137 votes and Claude S. Carney 82; all candidates 235 votes. Section 3646, Michigan Compiled Laws of 1897, paragraph 173, among other things, provides:

That immediately on closing the polls the board shall proceed to canvass the votes. Such canvass shall be public and shall commence by the comparison of the poll lists and a correction of any mistakes that may be found or made to agree. The box shall then be opened and the whole number of ballots counted. If the ballots shall be in excess of the number of electors voting according to the poll lists, they shall be replaced in the box and one of the inspectors shall publicly draw out and destroy so many ballots therefrom unopened as shall be equal to such excess. They shall first select and count the straight tickets and give the number to each candidate voted for on the straight tickets. All other tickets shall be laid on the table and counted in regular order in such subdivisions thereof as may be convenient for a prompt and careful determination of the result of such election.

The contestant complains of the action of the township board in opening the ballot box at 2 o'clock in the afternoon and permitting the ballots to be tallied by men not members of the board as violating the secrecy and integrity of the ballot of the voter.

Section 145, Michigan Compiled Laws of 1897, section 3618, provides:

That the box shall not be opened during the election except as provided by law in case of adjournments.

The Michigan law also provides that the board in townships may adjourn the polls at 12 o'clock noon for one hour, in its discretion.

The contestant in this township relies upon the two propositions:

(1) That the opening of the box before closing of the polls vitiated the entire poll.

(2) That the tally by two persons not members of the board vitiated the entire poll.

As to the first proposition: It was very unfortunate that the election inspectors did not procure another box in which to deposit the ballots after the ballot box furnished them by the proper authorities had become filled, yet there is no law of Michigan providing for the use of a second ballot box. The contingency seems to have been wholly overlooked by the State legislature. Had they adopted this course and procured another box no doubt complaint would have been made that this would vitiate the entire poll, because there was no law permitting the use of a second ballot box. The judges of the election were confronted by a condition; they were compelled to adopt some means for the conduct of the election during the remainder of the afternoon, and while some other method might have been less objectionable as the one adopted, yet in the absence of any showing of fraud we do not believe that the whole poll should be cast out for the simple fact that the ballot box was opened and emptied of its contents before the time prescribed by law.

As to the second proposition: We have searched the record carefully to determine whether or not Mr. Carney was deprived of any votes cast for him on account of the tallying being kept by two clerks called in and sworn, without authority, as inspectors of the elections. The contestee proved by a preponderance of the evidence that no mistake had occurred in the tally kept by these parties; without a showing upon the part of the contestant that he suffered a loss by reason of the unwarranted conduct on the part of the election inspectors in permitting this count to take place before the time prescribed by law, should the whole poll or any part of it be cast out? In the case of *Roberts v. Calvert* (98 N. C., 580), the holding is to the effect that if the ballots were thoroughly counted the fact that others than the elections officers handled them would not of itself destroy the election at the particular voting place.

The two clerks did not leave the voting place until after 5 o'clock; the ballots were separated, the straight tickets and split tickets being placed in separate piles. There was no evidence to show that any voter had access to any of the ballots. The only information that voters might receive in passing by the table would be the announcement of a name by an inspector. It is not shown that any voter saw either of the tally sheets kept by the clerks. While this was an irregularity that should not be encouraged, your committee does not believe that it destroys the secrecy or integrity of the ballot.

WINSOR TOWNSHIP, EATON COUNTY.

In this township the contestant complains that on the 7th day of April, 1913, which was the first Monday in April of that year, and on which date a general election was held in the State of Michigan, that upon opening the ballot box in this township it was discovered that the ballots were not initialed, and for this reason the poll of this township should be cast out. John M. C. Smith received in this township 174 votes, and Claude S. Carney 92, and there was cast a total of 344 votes.

Section 3647, of Michigan Compiled Laws of 1897, paragraph 174, provides:

After the ballots are counted they shall, together with one tally sheet, be placed in the box, which shall be securely sealed in such a manner that it can not be opened without breaking such seal. The ballot shall then be placed in charge of the township or city clerk, but the keys of said ballot box shall be held by the chairman of the board and the election seal in the hands of one of the other inspectors of election.

It was under the provisions of this statute that the ballots were placed in the box and preserved until the April election.

Paragraph 167, Michigan Compiled Laws of 1897, section 3640, provides:

No ballot shall be distributed by any person other than one of the inspectors of election, nor in any place except within the railing of the voting room, to electors about to vote, and no ballot which has not the initials of a member of the board of election written by such member on the back thereof shall be placed in the ballot box.

There was but one ballot and this was very large; the ballots were numbered consecutively, the number being printed upon the corner of the ballot. This corner was perforated so as to be easily torn off. The judge of elections should have placed the initials in ink or with lead or indelible pencil directly below the perforated line upon the

back of the ballot proper. Instead of doing this he wrote his initials upon the perforated corner, the ballot was handed to the voter with the perforated corner containing the number of the ballot and the initials of the judge upon it; the voter marked his ballot, returned it to another judge, who tore off the perforated corner and deposited the ballot in the box. It was in this manner that the irregularity arose. It was shown conclusively that Mr. Carney received every vote in the count to which he was entitled and which had been cast for him; that there was no intention to violate the express provisions of the statutes in initialing the ballot. The inspector who did the initialing had been a judge of elections for 10 years.

The legislature of the State had changed the law in reference to the place where the judge should write his initials upon the ballot, and the judge who did the initialing of the ballots testified that he supposed that he was following the law. So far as the record discloses, the election was honestly and fairly conducted and each candidate duly accredited with the votes he had received. Formerly the law required that the initials were to be written in ink on the upper left-hand corner on the back of the ballot; it was further provided that no ballot which was not indorsed with the initials of the poll clerk, as provided in that act, should be void and should not be counted.

In the case of *Horning v. Board of Canvassers of Saginaw County* (119 Mich., 51), it was held that the provisions of the election law, act No. 190, Public Acts 1891, section 22, requiring the inspector to write his initials upon the upper left-hand corner of the ballot, and section 36 of the act, declaring all ballots void not indorsed with the initials of the inspector as provided in the act, did not authorize the rejection by the canvassers of ballots inadvertently indorsed by the inspector in the lower left-hand corner, so much of the statute as designates the particular place for the indorsement being directory only. It will be noticed that by express provision of section 36 of that act, ballots not so initialed are declared void. The language would not indicate that the provision was mandatory. Later the supreme court of the State of Michigan, to our minds, reversed this decision in the case of *The People ex rel. Anderson v. Rinehart* (161 Mich., 585), the syllabus of this case is as follows:

Failure of an election inspector to write his initials on the lower left-hand corner of the ballot under act No. 55, Public Acts 1905, violates a mandatory duty which is not performed by initialing the ballots on the perforated corners that were torn off and requires the rejection of the defective ballot.

Here we have two decisions of the eminent court, the highest tribunal of the State of Michigan, construing practically the same language and deciding in one case that the language is directory merely and in the other case that it is mandatory. This compels us to look for a justification of the two conflicting rules. In the case of *The People v. Avery* (102 Mich., 572) the court says:

We have frequently held that the electors are not to be deprived of their votes by mere mistakes of their election officers when such mistakes do not indicate that the result has been changed thereby, and many things may occur that can be treated as irregularities.

It must be borne in mind that the acts complained of was the mistake on the part of the supervisor in initializing the ballots and no

act on the part of the electors. In *The People v. Bates* (11 Mich., 362), the justice delivering the opinion lays down this rule: "If the fraud of the voters, the ballot shall not be counted." In *Linstron v. Board of Canvassers* (94 Mich., 467) it is said:

The evident intent of this provision, referring to section 36, above pointed out, was to provide against voters marking the individual ballot which they cast in such manner as to distinguish it.

In *Loranger v. Navarre* (102 Mich., 259) we find this language:

The voter finding the ticket upon the official ballot is not required to determine its regularity at his peril. This might involve a necessary knowledge of facts difficult to ascertain. He may safely rely upon the action of the officers of the law, whom he has a right to suppose have done their duty.

In *The People v. Avery* (102 Mich., 572) this principle is laid down:

The electors are not to be deprived of the result of their votes at an election by the mistake of election officers when it does not appear to have changed the result.

This line of decisions clearly demonstrates that in the State of Michigan its supreme court has for many years recognized a clear distinction between those things required of the individual voter and those imposed upon election officers. A careful inspection of these cases cited will disclose that the Michigan court, until the decision of *People v. Rinehart*, discriminated between the acts of the electors and those of the officers. Acts to be done by the elector were mandatory, while those by the inspector were directory. These decisions recognized the principle that where there has been a substantial compliance of the law on the part of the individual voter, and it is made to appear that there has been in fact an honest expression of the public will, that such expression must be conclusive, although there may have been a failure to comply with some of the specific provisions of the law upon the part of the election officers.

McCreary on Elections, section 724, states the rule as follows:

The weight of authority is clearly in favor of holding the voter, on the one hand, to a strict performance of those things which the law requires of him, and, on the other hand, relieving him from the consequence of a failure on the part of election officers to perform their duties according to the letter of the statute, where such failure has not prevented a fair election. The justice of this rule is apparent, and it may be said to be the underlying principle to be applied in determining this question. The requirements of the law upon the elector are in the interest of pure elections and should be complied with, at least in substance, but to disfranchise the voter because of the mistakes or omissions of election officers would be to put him entirely at the mercy of political manipulators.

Paine on Elections, section 499, in treating of the subject says:

Honest voters may lose their votes through the criminal misconduct of dishonest officers of elections. While it is well settled that the mere neglect to comply with directory requirements of the law or the performance of duty in a mistaken manner without bad faith or injurious results will not justify the rejection of an entire poll, it is equally well settled that when the proceedings are so tarnished by fraudulent or negligent or improper conduct on the part of the officers, that the result of the election is rendered unreliable, the entire returns will be rejected, and the parties left to make such proof as they may of the votes legally cast for them. But when fraud on the part of the officers of elections is established the poll will not be rejected unless it shall prove impossible to purge it of fraud.

The contested election of *Burns v. Young*, Forty-third Congress, volume 2, Hinds's Precedents, 119, the House held that proof of mere irregularities in the administration of the election law does not justify the rejection of the votes.

In the contested-election case of *Richardson v. Rainey*, Forty-fifth Congress, second session, Hinds's Precedents, 176, a great array of irregularities was insisted upon by the contestant. We enumerate them:

A failure of one or more precinct officers to take the oath of office prescribed by law; a failure of one or more of the precinct officers to file the official oath in the office of the secretary of state; the failure to appoint a clerk at an election according to law; a failure of the precinct officer to organize a board; a failure to keep a poll list according to law; a failure to open the polls at the hour fixed by law; a failure of the clerk to take the oath of office as prescribed by law; the fact that a ballot box contained more than one opening; the circumstances that but one United States supervisor attended the election; an adjournment of the polls during the day; a failure to keep a tally list; a failure to count the ballots immediately after the close of the poll; a failure to administer the oath prescribed by law to the electors; the fact that the poll list, ballot boxes, and statement of results were not delivered to the county canvassers by the chairmen of the precinct boards; the refusal of the county canvassers to entertain and decide upon protests presented by electors; the fact that the election was conducted by two instead of three precinct officers, and the fact that the county canvassers opened the ballot boxes when they canvassed the votes.

It will be observed that most of the objections relate to acts of commission or of omission on the part of officers of elections. The committee having under consideration the questions involved make these observations: The voter is not to be deprived of his right and the citizens are not to lose the result of an election fairly held because of some important omission of form or of the neglect or carelessness or ignorance on the part of some election officers or the failure to carry out some important direction of the law.

In the case of *Cox v. Straight*, volume 2 Hinds' Precedents, 142, the House unanimously held that irregularities unaccompanied by fraud did not vitiate the returns. Now, let us apply these salutary rules to the case in hand. The proper inspector initialed the ballots above instead of below the perforated line. The ballot was given to the voter, who marked the same, returned it to the proper inspector, who, on receiving the ballot, would determine that the ballot was initialed by the proper inspector. By this procedure no spurious ballot could have been placed in the ballot box and no fraud could have occurred. The record does not disclose that either the electors or the inspectors knew any mistake had been made in the initialing of the ballots. The ballots were voted and counted without their validity being questioned. There is nothing to indicate that the inspector who marked them, or the elector who voted them, discovered they were not properly marked or that there was any wrong intended by anyone in connection with the transaction, nor could it be told for whom any individual elector voted. Under such a state of facts, should the electors voting these tickets be disfranchised? How could such a transaction destroy the integrity or secrecy of the ballot? Your committee feels impelled to follow the reasoning of a long line of decisions of the Supreme Court of Michigan, and the conclusion reached in the *Horning* case, rather than to adopt the more recent rule enunciated in the *Rinehart* case, and in so doing hold that there was nothing shown by the contestant to vitiate the poll in this township.

SECOND PRECINCT, SECOND WARD, BATTLE CREEK, CALHOUN COUNTY.

In this ward 375 votes were cast. The election officials in making up the statement sheets showing the results of the election omitted to credit the candidates with the number of straight votes each candidate had received, and gave the candidates from governor down only credit for the number of votes each had received upon the split tickets. The result showed that contestant had received only 23 votes and the contestee 31 votes. The straight Republican votes had been rolled into a bundle and placed in the ballot box and some one of the inspectors had marked the roll of ballots, "R straight, 66." The straight Democratic ballots had been rolled in a bundle and some one of the inspectors had marked on the bundle, "D straight, 38." A memorandum of the result of the election was made by one of the members of the board and placed in the ballot box. This memorandum corroborated the figures that were made on the two bundles. It being discovered from the statement that the candidates, from governor down, had not been given credit for the number of votes received by such candidates, the board of county canvassers caused the ballot box to be brought before them on the 13th day of November, at which time there was present, in addition to the board, the contestant. Subsequently, the contestee; John C. Davis, the Republican congressional committeeman; George Huggett, attorney for John M. C. Smith; and the city clerk. The contestant and no one on his behalf was present or had any notice of this last meeting. The poll book and tally sheet at this canvass showed that the highest Republican elector, 96 votes; the highest Democratic elector, 57 votes; the Prohibition elector, 4 votes; Socialist elector, 108; Socialist Labor elector, 18; National Progressive elector, 91; a total of 304, the aggregate of which makes 374 votes and tallies within one vote of as many as were on the poll list.

Ray Hart, the county clerk, was the custodian of one set of returns, and one set with their contents and the poll books, tally sheets, and statement books are required by law to be returned. He testified that after discovering from the tally sheet that only split votes had been credited to the candidates from the governor down he called the attention of the county board of canvassers to the fact; that the county board, after examining the books, requested him to summon before them the inspectors, together with the ballot box, which he did; that the board of inspectors upon convening took from the ballot box several rolls of ballots; that they removed nothing else from the rolls at that time; that they did not open the rolls or in any way attempt to count the ballots; that the inspectors stated to the board of county canvassers that the memorandum on the back of the rolls indicated the total number of ballots counted; that is, "D straight" stood for Democratic straight, and the number stood for the number of straight Democratic ballots. "R" represented the straight Republican ballots, and the figures on the back represented the number in the roll, and so on down through the various rolls; that the chairman of the board of canvassers, together with the two inspectors, took a sheet of paper, and as one of the inspectors called off the number that appeared upon the back of each one of the rolls,

say, "R" straight so many, and along on down, the chairman said, "D straight" so many, "S straight" so many, and made a memorandum; then the two inspectors present who made this memorandum took it, in the presence of each of them, and corrected the returns; that this added to the 31 votes already recorded for John M. C. Smith 66 straight votes, making a total of 97; that it added to the 23 already recorded for Claude S. Carney 38 votes, making him a total of 61.

It further appears that the board of inspectors were again convened on the 19th day of November, and that the ballot box was again unlocked, and Fred L. Christian, one of the inspectors, took from the ballot box a memorandum which he stated that he had made the night of the election and at the time the straight ballots were counted; that this memorandum did not change the result made by the board at the first meeting, but corroborated it.

Fred L. Christian corroborated Ray Hart in his testimony, and states that on the night of the election he took a slip of paper and wrote down all the straight ballots and all the split ballots of the different parties voted for to see that the total was correct with the number of ballots cast; that he placed this paper in the box on the night of the election; that when the ballot box was opened on the 12th day of November he found everything in as good condition as could possibly be and as it was on the night of the election before sealing the box; that on the 19th day of November he compared it with the returns that had been corrected and that it tallied with the corrected returns; that he added the split votes to the straight votes of the different candidates to make a total; that the original count omitted the straight votes for each candidate; that on the night of the election the straight ballots of each party was rolled by itself, a string tied around them, and marked so many straight ballots for each party, whatever the party was.

Harry Christian, another inspector, corroborated the testimony of the two preceding witnesses.

The contestant complains that the action of the county board of canvassers and supervisors of the election, in changing the final returns, was in violation of the provisions of the law; that the board of county canvassers were obliged to canvass the vote according to the returns made by the inspectors on the night of the election; that the board of election inspectors had no authority to reconvene and correct the returns.

Section 3647, Michigan Compiled Laws, 1897, paragraph 174, provides:

After the ballots are counted they shall, together with one tally sheet, be placed in the ballot box, which shall be securely sealed in such a manner that it can not be opened without breaking such seal. The ballot shall then be placed in charge of the township or city clerk, but the keys of said ballot box shall be held by the chairman of the board and the election seal in the hands of one of the inspectors of election.

Section 3648, Michigan Compiled Laws, paragraph 175, provides:

That immediately after the count of the tickets or ballots has been completed, the result and the number of votes received by each candidate or person on the ticket shall be publicly declared by one of the inspectors. The inspectors shall then prepare a statement of the result in duplicate showing the whole number of votes cast for each office, the names of the persons for whom such votes were given and the number each person received, in which statements the whole number of votes given

for each office, and the number given for each person shall be written out in words at length. Such duplicate statements, when certified by the inspectors and duly signed, shall be delivered to the township or city clerk, and shall by said clerk be, within twenty-four hours after the result is declared, delivered in person or immediately forwarded by registered mail, one copy to the board of county canvassers in care of the judge or register of probate, and the other, together with one of the original tally sheets, to the county clerk, which said statements and tally sheets shall be placed in separate envelopes and sealed by said inspectors before their delivery to the township or city clerk.

We call attention to the fact that one copy of the returns, by this statute, is required to be made to the judge or register of probate, and another, together with one of the original tally sheets, to the county clerk.

By section 3665, Michigan Compiled Laws, 1897, paragraph 239, it is provided:

That the board of county canvassers shall then proceed without delay to canvass the return of votes cast for all candidates for office voted for and all other questions voted on at said election, according to the returns filed in the office of the county clerk by the several boards of election inspectors of the various voting precincts in the county, and the returns or tally sheets filed with the board of canvassers by the central counting board in counties where a central counting board is provided for counting the ballots cast in said county or any part thereof in lieu of their being counted by the election inspectors of the voting districts. If it shall be found upon the convening of said board of canvassers that the returns from any of the boards of election inspectors of the several election districts, or the returns of such central counting board are missing, incomplete, or incorrect, or for any other reason it is found necessary, then said board of county canvassers shall have power to adjourn from day to day until said returns shall have been procured or corrected. Said board of canvassers are hereby empowered to summon the person or persons having the boxes containing the ballots cast at such election and the keys and seals of said boxes, or having such returns or the poll books or tally sheets used and made at such elections, to bring said boxes, seals, keys, returns, poll books, and tally sheets before said board, and said board of county canvassers are authorized to open said boxes and take therefrom any books or papers bearing upon the count and return of the election inspectors of such election districts or the returns of such central counting board, but they shall not remove or mark the ballots therein. Said board of canvassers may summon such election inspectors or central counting board before them and require them to make correct returns in case, in its judgment, after examining such returns, poll books, or tally sheets, the returns already made are incorrect or incomplete, and they shall canvass the votes from the corrected returns.

By the express terms of this statute the board of county canvassers are given, if they find that a mistake has been made, the power to correct the returns made by inspectors of any election precinct. It is given the authority to summons the election inspectors before them and require them to make correct returns, and, if in its judgment, after examining such returns, poll books, or tally sheets, the returns are incorrect or incomplete, to canvass the votes from the corrected returns made by the election inspectors. This was all that was done in this ward. It is true that the board of county canvassers themselves first corrected the returns by resorting to evidence outside of the board of election inspectors; then to make sure that they had made no mistake they called the election inspectors, who went over their canvass and who fully corroborated it.

The contestant relies upon the case of *Roemer v. Canvassers* (90 Mich., 27). In this case the Supreme Court of Michigan says:

We are all satisfied, however, that the canvassing board had no right to accept or act upon the second return of the inspectors; that such second return was a nullity. When the inspectors had completed their count and executed and delivered the returns, their legal powers ended, and any attempt on the part of the inspectors to change or modify such original returns in any particular involving any other than a mere clerical duty was clearly beyond their powers.

The decision further says:

It is not necessary to go to the length of holding that a clerical error which is patent upon the face of the papers may not be corrected by the board of inspectors after the returns have been made up and signed, but that question is not now before us.

In the case now under consideration it might well be said that the mistake that was made in this ward, being apparent from the face of the papers, from the fact that the presidential electors had received a vote largely in excess of the candidates from the governor down, was merely clerical, and that the board, from the evidence before them, had a perfect right to correct the returns, but in order to reach a proper conclusion it is not necessary for us to so hold. In the above-cited case the Supreme Court of Michigan granted a writ of mandamus to compel a recount of the ballots and to seat the person having the highest number of votes in the ward. This is significant as showing that the supreme court intended that where a mistake was manifest upon the face of the records that such mistake should be corrected by the proper tribunal, and did not hold that such mistake should vitiate the entire poll of the ward.

The decision in the case of *Roemer v. Canvassers* (90 Mich., 27) was made on the 22d day of January, 1892. Subsequently the legislature of the State enacted paragraph 239 of the Compiled Laws of Michigan, 1897, expressly granting to the board of county canvassers the right to call before them the proper witnesses and correct any mistake that was manifest upon the face of the returns.

The statute above quoted gives to the board of county canvassers and the board of election inspectors absolute authority and power to do precisely what they did in this case. It was not shown, and in fact not even claimed, that John M. C. Smith was not credited with every vote that he received in this ward or that the contestant, Claude S. Carney, was not credited with every vote that he received. To vitiate this entire poll on account of the things complained of by the contestant, when such acts were expressly authorized by the statutes of Michigan, and, in the face of the fact that no fraud actually or constructively existed, would be repugnant to our ideas of right and justice.

The foregoing seven precincts cover those particularly complained of by contestant in his initial brief. In his notice of contest and initial brief he claimed that another group of voting precincts, where instructions were given to voters, they were assisted in marking their ballots without an oath being administered, as required by the statutes, that such ballots should be excluded.

It is sufficient as to this complaint to say that the contestant relies upon the case of *The Attorney General ex rel. Reynolds v. May* (99 Mich., 568), in which a majority of the court holds that such ballots should be cast out. The contestant dismisses the subject in his brief with this statement:

If this rule is adopted in the settlement of this contest, then the result of applying the rule as to the actual illegal votes of that nature shown in the entire record will not affect the standing of either party to this contest.

He concludes his brief with a tabulated statement as to how the various precincts should be treated, as follows:

	Smith.	Gain.	Loss.	Carney.	Gain.	Loss
Original total vote.....	14,009			14,452		
Climax Township, Kalamazoo County:						
Original vote—						
For Smith.....	82					
For Carney.....	82					
Corrected vote by consent—						
For Smith.....	90					
For Carney.....	100					
Gain—						
For Smith.....	7	7				
For Carney.....	18				18	
Third ward, city of Charlotte, Eaton County:						
Original vote—						
For Smith.....	214					
For Carney.....	116					
All should be thrown out.						
Loss—						
For Smith.....	214		214			
For Carney.....	116					116
Sunfield, Eaton County:						
Original vote—						
For Smith.....	174					
For Carney.....	104					
All should be rejected.						
Loss—						
For Smith.....	174		174			
For Carney.....	104					104
Second ward, city of Charlotte, Eaton County:						
Original vote—						
For Smith.....	161					
For Carney.....	107					
All should be rejected.						
Loss—						
For Smith.....	161		161			
For Carney.....	107					107
Carmel Township, Eaton County:						
Original vote—						
For Smith.....	137					
For Carney.....	82					
All should be rejected.						
Loss—						
For Smith.....	137		137			
For Carney.....	82					82
Whisper Township, Eaton County:						
Original vote—						
For Smith.....	174					
For Carney.....	92					
All should be thrown out.						
Loss—						
For Smith.....	174		174			
For Carney.....	92					92
Second Precinct, second ward, city of Battle Creek						
Calhoun County:						
First return—						
For Smith.....	31					
For Carney.....	28					
Change returns—						
For Smith.....	97					
For Carney.....	61					
As last figures were included in face of returns						
there should be deducted—						
From Smith.....	66		66			
From Carney.....	38					38
Total.....		7	926 7		18	520 18
Deduct.....	919		919	521		521
	13,090			13,961		
Total corrected vote for Carney.....						13,961
Total corrected vote for Smith.....						13,090
Plurality for Carney.....						271

However, in a supplemental brief filed by the contestant he set forth a tabulation of the votes of this character, which he claimed should be cast out as follows:

	Carney.	Smith.	Illegal votes.
Kalamazoo city:			
Third precinct.....	122	113	7
Fourth precinct.....	194	144	5
Seventh precinct.....	198	157	3
Ninth precinct.....	175	151	2
Tenth precinct.....	89	115	5
Twelfth precinct.....	122	73	4
Thirteenth precinct.....	250	160	5
Fourteenth precinct.....	179	160	2
Texas.....	66	55	2
Reading.....	168	122	3
Albion, first ward.....	138	111	2
Bellevue.....	155	246	2
Charlotte:			
Second precinct.....	107	161	7
Third precinct.....	116	214	8
Winsor.....	92	174	(1)
Sunfield.....	104	174	(1)
Carmel.....	82	137	(1)

¹ All illegal.

Proportioning these illegal votes to contestant and contestee, the following results:

	Carney.	Smith.
Kalamazoo city:		
Third precinct.....	4	3
Fourth precinct.....	3	2
Seventh precinct.....	2	1
Ninth precinct.....	1	1
Tenth precinct.....	3	2
Twelfth precinct.....	3	1
Thirteenth precinct.....	3	2
Fourteenth precinct.....	2	
Texas.....	1	1
Reading.....	2	1
Albion, first ward.....	1	1
Bellevue.....	1	1
Charlotte:		
Second precinct.....	3	4
Third precinct.....	3	5
Winsor.....	92	174
Sunfield.....	104	174
Carmel.....	82	137
Total loss.....	310	510
Total loss, Smith.....		510
Deduct Carney loss from Smith loss.....		310
		200
Deduct Smith plurality.....		116
Leaves plurality for Carney.....		84

It will be noticed from the foregoing tabulation that if the committee concurred with the conclusions of the contestant that, exclusive of the entire poll of Winsor, Sunfield, and Carmel precincts, the contestant himself claims a total of 57 votes of this character that should be thrown out. We have heretofore shown that the poll in each of the three precincts, Winsor, Sunfield, and Carmel, should not be cast out.

It is well settled by the precedents of the House that illegal votes in any poll should be taken from the total vote of the poll proportionately according to the entire vote returned for each candidate.

The record does not disclose the votes that were cast for each of the congressional candidates in the precincts where we have found illegal votes, and for that reason and the further reason that it does not affect the result, we have apportioned these illegal votes between the contestant and the contestee in proportion to the votes that each received in the several precincts.

Precinct.	Carney.	Smith.
Kalamazoo:		
Third.....	4	3
Fourth.....	3	2
Seventh.....	2	1
Ninth.....	1	1
Tenth.....	3	2
Twelfth.....	3	1
Thirteenth.....	3	2
Fourteenth.....	2	2
Texas.....	1	1
Reading.....	2	1
Albion, first ward.....	1	1
Bellevue.....	1	1
Charlotte:		
Second.....	3	4
Third.....	3	5
Total loss.....	32	25

Deducting Mr. Smith's loss from Mr. Carney's loss makes a gain of 7 votes for Mr. Smith, which added to Smith's plurality, conceded to be 116 votes upon the face of the returns after making the correction for the township of Climax, county of Kalamazoo, would give Mr. Smith a majority of 123 votes.

The record in the case was most voluminous, containing more than 600 pages, covering many points in controversy, but your committee has aimed to give each question careful consideration and apply the facts and the law as to it seemed just and proper, in order to determine the question whether Mr. Carney or Mr. Smith was elected. The committee has tried to rise above the question of partisanship, and endeavored to determine from all of the testimony who was in fact elected by the voters of the third congressional district of the State of Michigan. In passing this case, the committee feels that there is ground for complaint against some of the provisions of the election laws of the State, as well as against the manner in which elections are conducted in that State. This is the second contest which your committee has had under consideration, coming from the State of Michigan, having had before it the case of *William J. MacDonald v. H. Olin Young*, reported at the first session Sixty-third Congress.

The fact that under the election laws of the State of Michigan township officers are principally made the judges and clerks of the election frequently results in an entire board being of one political complexion only. Such a condition must inevitably give rise to election controversies and engender serious complaints of mere irregularities. This is clearly exemplified from the fact, which is alleged by the contestee in his answer and shown by the testimony in the case, that the irregularities complained of by the contestant in his notice of contest were more or less a common thing throughout the entire district in this election. In fact irregularities existed in many of the precincts which were carried by the contestant as well as those carried by the contestee. Your committee, from a research of the

evidence disclosed by the whole record, are unanimously of the opinion that if the various polls which the contestant insists should be entirely thrown out on account of the irregularities, which we have heretofore pointed out, then a greater number of precincts that were carried by the contestant in which similar and other irregularities occurred would have to be thrown out, and in this respect the seat of the sitting Member would not be disturbed. Such a state of affairs should not exist in any State of the Union. Elections should be fairly and honestly conducted and free from any irregularities tending to create the least suspicion. A board created by the law with the important duty of conducting an election should be as near nonpartisan as is possible.

Take as a concrete example the irregularities complained of in the instant case in Sunfield Township, Eaton County, where the board of inspectors called in Albert Sayer, as an instructor, and who delivered the ballots to the voters in that precinct during the entire day of the election. This was a most egregious irregularity and your committee do not hesitate to condemn it with many other practices permitted in the conduct of the election as disclosed by the record. If these practices are permitted to continue in the State of Michigan, then we may expect more contested cases to arise from that State. But, where no fraud, actual or constructive, is shown, we believe it is a monstrous proposition to say that the voters of an entire precinct shall be disfranchised upon a mere irregularity. The law should not be so construed as to make the machinery of an election a snare to entrap the unsuspecting voter. For your committee to hold that many of the irregularities complained of in this case should vitiate the election in the precincts where the irregularities occur, would be to charge the individual voter with knowledge of the personnel of the inspectors or of those designated to assist them. So far as we know, judges and clerks of election have no insignia of office. In Sunfield Township, Eaton County, we do not believe that it was incumbent upon each individual voter when he entered the voting place to cast his ballot to determine the authority of those in charge, or that if he did not he voted at his peril.

The voter in this precinct was not bound to suspect that those who were there conducting the election were not there by authority. If Albert Sayer in this precinct was not there assisting in the conduct of the election by authority of law, he was in fact a de facto officer, and your committee believes that in the absence of any showing of fraudulent conduct upon his part that it would be a preposterous proposition to annul the entire poll of that precinct on this account alone. A like line of reasoning, and we think upon principle, can be applied to each and every other ward and voting precinct complained of by the contestant. It being conceded that the votes cast for the contestee in the several precincts complained of were cast by honest voters and qualified electors of the district, then we submit that the case should not be decided upon any technicalities arising in the manner or form in which the voter received his ballot or in the count thereof.

As a comparison of the irregularities complained of by contestant and contestee, we call attention to the township of Reading, Hillsdale County. In this township Claude S. Carney received 183 votes and John M. C. Smith 122 votes, a plurality of 61 votes for Carney.

In this precinct the ballot box which had been furnished by the proper legal authorities became filled up and the board was compelled to get another box. They procured a wooden box, nailed up, with a slot cut into the top. There was no lock on the box. The inspectors received and placed the ballots within this second box. The voting was held in the village hall, which was upon the second floor. Some disabled voters were unable to climb the stairway and one election inspector, with a Democratic and Republican challenger, went down to the street, delivered to three voters ballots which were marked by the voters, their ballots folded up; then they took the ballots upstairs and placed them in the ballot box. The procuring of the second ballot box was unauthorized by law, but this could amount to nothing more than a condition over which the judges and clerks of the election had no control. Permitting voters to receive and mark ballots outside of the booths was not only an irregularity but absolutely prohibited by law. Yet these instances are no more a flagrant violation of the election laws of Michigan than the various instances complained of in the seven precincts relied upon by the contestant.

In the seventh precinct, city of Kalamazoo, evidence was introduced to show that women were permitted behind the railing at the voting places, and that a woman by the name of Marsh assisted in handing out to the voters ballots, and that she handed out the ballots instead of the inspector, and did this several times. This testimony was sworn to by B. O. Bush, one of the inspectors of the election in the precinct. The evidence upon the point that Miss Marsh handed out ballots conflicted and she herself denies the accusation. At the time of the general November election, 1912, the question of woman suffrage was also submitted to the voters; the legislature prior thereto made a provision to the effect that women challengers might be within the railing, but did not authorize them to receive and deposit ballots. In many of the precincts throughout the district, under the provisions of this act, women were permitted within the railing. In this precinct the contestant received 196 votes and the contestee 157, giving contestant a plurality of 39 votes. It will thus be seen that if your committee were to decide this precinct in favor of the contestee, and concur in the opinion of the Supreme Court of the State of Michigan, that by the provisions of the Michigan laws, to the effect that no one but an inspector can receive a ballot, is mandatory, the contestant must necessarily lose 39 votes. We do not deem it expedient on account of the extreme length of this report to analyze in detail all of the irregularities complained of by the contestee in his answer to the notice of contest or in his brief, and to which the evidence was directed in each and every case, but will be content with the statement that a careful analysis will disclose that if the committee adopted the decisions of the highest court of the State of Michigan, holding that many of the provisions of the law of that State to be mandatory, so far as they relate to the conduct of elections, that we would be compelled to find that the contestee was elected by a larger majority than was shown by the returns and official canvass made by the canvassing board.

The contestant filed three briefs with the committee. In each brief he set forth a tabulation of the votes to which he claimed he was entitled upon his assertion of facts and conclusions of law. In

his first brief, page 25, he claimed that the record entitled him to a plurality of 271 votes; in his second brief, page 7, he claimed that he was entitled to a plurality of 229 votes; and in his third brief he claimed only a plurality of 84 votes.

The committee, after careful and patient study of this case and a close analysis of the various irregularities complained of, determine that Claude S. Carney is entitled to 100 votes in the township of Climax, county of Kalamazoo, and John M. C. Smith is entitled to 90 votes in that township, and that there should be deducted from the plurality of John M. C. Smith on account thereof 11 votes; that there should be deducted from the following precincts illegal votes as follows:

Precincts.	Votes.	Precincts.	Votes.
Kalamazoo city:		Texas.....	2
Third.....	7	Reading.....	3
Fourth.....	5	Albion, first ward.....	2
Seventh.....	3	Bellevue.....	2
Ninth.....	2	Charlotte:	
Tenth.....	5	Second.....	7
Twelfth.....	4	Third.....	8
Thirteenth.....	5		
Fourteenth.....	2		57

A total of 57 votes; that these should be proportioned to contestant and contestee, as follows:

Precincts.	Carney.	Smith.	Precincts.	Carney.	Smith.
Kalamazoo city:			Texas.....	1	1
Third.....	4	3	Reading.....	2	1
Fourth.....	3	2	Albion, first ward.....	1	1
Seventh.....	2	1	Bellevue.....	1	1
Ninth.....	1	1	Charlotte:		
Tenth.....	3	2	Second.....	3	4
Twelfth.....	3	1	Third.....	3	5
Thirteenth.....	3	2			
Fourteenth.....	2	0		32	25

That the difference between these losses should be added to the plurality of John M. C. Smith; and that he was elected by a plurality of 123 votes.

Your committee, therefore, offers for adoption the following resolutions:

Resolved, That Claude S. Carney was not elected as a Representative to the Sixty-third Congress from the third congressional district of Michigan; and

Resolved, That John M. C. Smith was duly elected as a Representative from the third congressional district of Michigan to the Sixty-third Congress, and is entitled to retain the seat which he now occupies in this House.

Respectfully submitted.

J. D. POST, *Chairman*.WALTER ELDER.
HUBERT D. STEPHENS.BURTON L. FRENCH.
CHARLES R. CRISP.JAMES A. FREAR.
GEORGE MCCLELLAN.WALTER M. CHANDLER.
CHARLES M. BORCHERS.

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